THE COURT OF APPEAL

Neutral Citation No.: [2022] IECA 204
Court of Appeal Record No. [253/2020]

The President
McCarthy J
Kennedy J

BETWEEN

THE PEOPLE
(AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)

RESPONDENT

AND

P.G.

APPELLANT

JUDGMENT of the Court (*ex tempore*) delivered on the 8th day of April 2022 by Mr. Justice McCarthy

1. This is an appeal against the severity of a sentence imposed in the Sligo Circuit Criminal Court on Bill No: SODP0021/2020. PG, the appellant herein, was arraigned on the 14th of July 2020 and pleaded guilty to a count of sexual assault contrary to section 2 of the Criminal Justice (Rape) (Amendment) Act 1990, as amended by section 37 of the Sex Offenders Act 2001. The matter was adjourned for sentence to the 30th of October 2020 when the appellant pleaded guilty to a further twenty-two additional counts for the same offence as against one KF, the complainant herein. The offences charged occurred between 1999 to 2012. The appellant pleaded guilty to the following counts: 1-12 inclusive, 14, 18, 22, 26, 30, 34, 38, 42, 46, 50 and 54. The counts addressed the repeated offending over those years. A higher degree of particularity was possible on the evidence in respect of counts 1-11 than in the others to which we might refer as samples to address the offending over the period in question. Counts 1-11 are as follows: -

> Count No. 1 – [The appellant] on a date unknown between the 1st September 2000 and the 30th of June 2002 at [a location] did sexually assault one [KF] a female by touching her breasts.

Count No. 2. – [The appellant] on a date unknown between the 1st September 2000 and the 30th of June 2002 at [a location] did sexually assault one [KF] a female by placing his hand under her t-shirt, kissing her neck and collar one region and by touching her back with his erect penis.

Count No. 3 – [The appellant] on a date unknown between the 1st September 2000 and the 30th of June 2002 at [the appellant's home] did sexually assault one [KF] a female by touching her breasts, shoulders, stomach and vagina with his hands and by touching her back with his erect penis.

Count No. 4 – [The appellant] on a date unknown between the 1st September 2000 and the 30th of June 2002 at [the appellant's home] did sexually assault one [KF] a female by penetrating her vagina with his finger.

Count No. 5 – [The appellant] on a date unknown between the 1st September 2000 and the 30th of June 2002 at [the appellant's home] did sexually assault one [KF] a female by penetrating her vagina with his finger and forcing her to touch his erect penis.

Count No. 6 – [The appellant] on a date unknown between the 1st September 2000 and the 30th of June 2002 at [the appellant's home] in the County of Sligo did sexually assault one [KF] a female by kissing her neck and penetrating her vagina with his finger.

Count No. 7 – [The appellant] on a date unknown between the 1st September 2000 and the 30th of June 2002 at [the appellant's home] did sexually assault one [KF] a female by touching her breasts and vagina.

Count No. 8 – [The appellant] on a date unknown between the 1st September 2000 and the 30th of May 2005 at [the appellant's home] did sexually assault one [KF] a female by kissing her neck, touching her breasts and by penetrating her vagina with his finger.

Count No. 9 – [The appellant] on a date unknown between the 30th of May 2005 and the 22nd of March 2006 at [the complainant's home] did sexually assault one [KF] a female by touching her breasts.

Count No. 10 – [The appellant] on a date 1st of August 2007 at [the complainant's home] did sexually assault one [KF] a female by kissing her lips and penetrating her vagina with his finger.

Count No. 11 – [The appellant] on a date unknown between the 23rd March 2010 and the 22nd of March 2012 at [the complainant's home] did sexually assault one [KF] a female by touching her breasts.

2. Prior to the commencement of section 37 of the Sex Offenders Act 2001 on the 27th of September 2001, the maximum sentence for sexual assault was 5 years imprisonment.

After the section's commencement and while the victim remained under 17 years of age, the maximum sentence was 14 years and once the victim turned 17 the maximum sentence available was 10 years. The DPP in her submissions has provided a table setting out in the case of each offence the age at the time of the offence of the victim and the maximum penalty attracted by such offence. With the exception of the numbers 1-11, the counts are in chronological order and the sentences applicable vary because of the age of the victim and having regard to the Sex Offenders Act 2001. We reproduce that table hereunder: -

Count	Age	Maximum
1	10 – 12	5
2	10 – 12	5
3	10 – 12	5
4	10 – 13	5
5	11 – 13	5
6	11 – 12	5
7	11 – 12	5
8	12 – 15	14
9	15	14
10	17	10
11	20 – 21	10
12	9	5
14	9 – 10	5
18	10 – 11	5
22	11 – 12	14
26	12 – 13	14
30	13 – 14	14
34	14 – 15	14
38	15 – 16	14
42	16 – 17	10

46	17 – 18	10
50	18 – 19	10
54	19 – 20	10

3. The guilty pleas were entered to those twenty-three counts on a so called "*full facts*" basis set out on the indictment with the remaining thirty-one counts being taken into consideration. The cumulative sentence ultimately imposed was one of twelve and a half years imprisonment, with the final four years suspended on condition that the appellant would keep the peace and be of good behaviour for a period of four years from the date of his release. The appellant was obliged to place himself under the supervision of the Probation Services for a period of one year following his release and to comply with any directions of the Probation Services, to include the completion of therapeutic courses during the period of suspension.

4. The offences began when the complainant was a child and continued until her early twenties when she had entered into college studies. The appellant was born in 1953 and the complainant was born in 1990. The appellant was married to a maternal aunt of the complainant and he often visited the complainant's house ostensibly to visit his sister-in-law. The familial relations between the parties allowed the appellant frequent access alone to the complainant.

5. Although the complainant described disturbing behaviour on the part of the appellant from the time when she was around seven or eight years old, it was when she was around 9 years of age and in fourth class that the appellant began to engage in overt and sustained sexual abuse . She described such initial behaviour as "*touchy feely hugs*" and "*grabbing her from behind and squeezing across her*". The complainant was concerned about this behaviour at quite an early stage, she remembers asking a nun at school who was teaching her class about respecting one's elders as to what happens in a case where one does not want to do what adults are asking one to do and she was told that adults always know best and one should always respect them. The complainant despite her youth was confused by this and had a gut feeling that what was being done to her was wrong. The offending behaviour began with touching, hugging, attempts at kissing, touching of the breast and vaginal areas.

6. There were a number of settings in which the appellant isolated the complainant so as to abuse her for his own gratification. We will detail these individually. The first such setting was the appellant's car and the appellant used this setting for much of the earlier abuse under the pretence of taking the complainant out for drives. The complainant stated that the appellant frequently used these opportunities to get her alone in his car, and park in a secluded area, where he could engage in abuse. He would lean over to her on the passenger side and squeeze her right thigh, kiss her and touch her breasts. The appellant would tell her that he loved her, and the complainant felt that she could not resist and if she protested that this would only make matters worse. She was also becoming more concerned as she progressed into puberty as she felt the appellant would then take even more of an interest

in her. On one such occasion the appellant parked his car at a lake and proceeding to sexually assault her in the outdoors, an incident which she described as follows: "*he was pushing his erect penis into her back. And she says that this gave her a fright and that she had had the talk with her mother about the birds and the bees then, so she knew what a penis was, and she was very frightened by this"*. The appellant felt that her parents would not believe her if she complained to them and refers to the car incidents as being quite frequent when she was in fifth or sixth class.

7. Another common setting for abuse was the appellant's home; under the false pretence that the appellant was inviting her to his home to bake tarts and cakes, it started off as the appellant grew rhubarb which he froze and had enough for all year round, for which he could then have the complainant over to help with baking. This abuse occurred when the complainant was in fourth, fifth and sixth class. At first it occurred weekly and after a few months, the visits became more sporadic. Furthermore, these visits occurred on weeknights as the complainant remembers having to go into school the next day. Most pertinently on each of these occasions the arrangement to have her come over to bake was what we might describe as a deceptive stratagem to abuse her. The complainant's parents innocently encouraged this as the appellant and his wife did not have any of their own children and the complainant was therefore like the child they never had. The complainant was mostly alone with the appellant in his kitchen when she would go over to the appellant's home. The complainant was angry and felt like a sacrificial lamb, as she put it, being sent on these trips to the appellant's home rather than her siblings; although she did not want to go to the appellant's house on these occasions, she felt she had no choice and she thinks that the appellant "*picked on her because she was the weak link*" and she felt that was she was "*being groomed and manipulated and that he knew that she wasn't going to tell on him and he would always tell her that he wasn't doing anything wrong and that he would never hurt her*".

8. As part of the appellant's modus operandi for grooming the complainant he told her that the reason that he did these things was because her aunt was on medication and had no interest in doing this kind of stuff. She doesn't think he specifically referred to sexual behaviour, but thought he was referring to the touching and the feeling and that his own wife wasn't interested in this as an explanation to why he was behaving thus to her. Of course, she bore no responsibility for that to which she was being subjected but felt somewhat responsible and that she had to put up with it so that these things wouldn't happen to her sister or, indeed, to her aunt. The behaviour on these occasions in his home was largely predictable in that he would always come up from behind her as soon as they were alone and pin her to the kitchen worktop; he would squeeze her breasts and shoulders and place his head on her shoulder where he would try to kiss her neck and face and place his hand down her top feeling her breasts. The complainant also explained that the appellant would hold her around his stomach and proceed to put his hand outside of her trousers working his hand towards her private parts. The complainant stated that she would always reject these advances and tell him to get off her, but he would minimise his behaviour by making jokes about it and never showed any remorse. He always remained

persistent and did not show any concern as to the complainant's requests to be left alone. This was typical of his modus operandi.

9. The complainant had a particular memory of one such occasion where she was wearing tracksuit bottoms; this was the first time that the appellant attempted to place his hand inside her trousers. On this occasion, she didn't know it was about to happen because he had never placed his hand inside her underwear before but he was feeling around and although she didn't know what he was looking for, he told her that he was looking for what was her clitoris and the word that she recalls him using is that he was looking for her "*clit*". She was again in fifth or sixth class at this time, aged between 10 to 12 years old and after this she did not wear tracksuit bottoms again unless she had no choice. As a means to try to better protect herself from the appellant's advances, she started to try to wear tightly buttoned jeans and avail of the use of belts in order to slow him down. Sexual abuse occurring in the kitchen progressed to a more serious nature after this and the complainant outlines that sometime between the ages of 10 and 13 he started putting one finger into her vagina and that once this started "*every time she would come over to bake he would do it*".

10. The complainant also recounted another incident in the course of which the appellant had been putting his finger in the complainant's vagina; thereafter and quite quickly he grabbed her by the arm and dragged her into the bathroom. The complainant says the bathroom was next to his kitchen and he dragged her and pushed her inside. The complainant was terrified and stated that the appellant then zipped down his trousers and took out his penis. She says this was the first time she had seen a penis and it made her feel physically sick. The appellant told her to touch his penis and he grabbed her hand forcing it onto his penis where he used her hand in order to masturbate himself. Afterwards, the appellant released her hand and cleaned himself up. The complainant was scared as the bathroom door had been locked and the appellant didn't open it until he had finished cleaning himself up and had done up his trousers. The complainant described being afraid that her aunt would find out. She did not understand what was happening as she was only aged 11 or 12 at the time. Again, she felt it was her own fault and she felt responsible for the fact that he was doing such things to her, an emerging response of the appellant's prolonged grooming.

11. Another common setting was a tool shed which the appellant had constructed at the back of his home allowing for the continued perpetuation of sexual abuse in a more secluded location and one for which was further at bay from his television watching wife. The complainant believes that this shed was purpose built for abusing her and she referred to how its construction was even the subject of humour at home as the appellant didn't have any tools, nor was the appellant considered anything of a handyman and her father would joke that maybe it was for his wife's mug collection. At the time which the tool shed became the new location for abuse, she was in sixth class.

12. The final common setting for occasions of sexual abuse was in the complainant's own home and this became a means for the appellant to continue his abuse of the complainant as she got older and stopped going to the appellant's own home. These incidents began sometime

between the age of 12 and 15 and would mainly take place on Saturdays - she refers to the fact that the appellant would say" how much he missed her". He called ostensibly to visit the victim's father, and she would often be left alone with the appellant if he asked for her; when the complainant's father had to leave he used the opportunity to abuse her. The complainant described one of these incidents in the course of which the appellant pinned her to the counter, kissed her, felt her breasts and put his hands down her trousers. She further stated that on most Saturdays during this period the appellant would insert a finger into the victim's vagina.

13. The appellant repeatedly told her over many years that he loved her and would not hurt her and notwithstanding her pleas to him to desist from the conduct, he continued it. The complainant outlined that in 2006 the appellant separated from his wife, and despite the severance of family ties, he used the separation as an excuse to go to her house more often because of an agreement that he would pay her aunt €50 for subsistence per week. Instead of doing it through the bank, he would come to the complainant's house every Friday evening whilst also still making visits on Saturdays. The complainant remembers the abuse continuing through her college years; during those years she would sometimes be home on Friday evenings, but she would try not to be alone with him. The complainant also remembers that she would still see him on her return home from college and that any time she would come home he'd say that he hadn't seen in her in ages and he would ask for help with his phone to get access to her as well as mentioning that he still had plenty of rhubarb if they wanted to go baking together. He left her gifts. The sexual abuse stopped when she was aged 20 or 21 and in her second year of college. During the final period, when the complainant was home studying, as soon as she was alone the appellant he would resume his usual conduct - hugging the complainant, feeling her breasts, and putting his hand down her trousers.

14. The complainant became terrified of the appellant at an early stage and this state of terror persisted into her 20s – on one occasion, for example, when the appellant arrived at her home she hid lest he see her (conduct which merely exemplifies reactions to the appellant throughout the years).The complainant thereafter made efforts to cut all access to the appellant, blocking his phone number and despite not being able to abuse her for the ensuing years, he continued to make sporadic efforts to try and see her until one final attempt in the summer of 2018 whereupon the complainant decided to make a limited disclosure to An Garda Síochána.

15. The prolonged sexual abuse and grooming of the appellant have had enormous implications in her life. The complainant attributes stomach pains, digestive troubles, anxiety, sleep disturbance, anger, severe stress, binge eating, suicidal thoughts and self-harm as a direct consequence of the sexual abuse she was subjected to. She provided a very lengthy and detailed account of the traumatic and long-term effects that this ordeal has had on her in her Victim Impact Statement. We cannot refer to it in full, however, we make reference to some of the most salient points; we think those points were accurately summarised by the DPP as follows -

"*In her victim impact statement the victim estimated that she had incurred medical and hospital costs in the amount of €15,724. Alternative therapies and counselling cost her €11,750 and she lost out in wages in the amount of €35,000 making a total economic loss of €62,474.*

The victim could recall feeling miserable at age 9 and having stomach pains and digestive problems which could not be diagnosed.

Her mind now races with the thought of sexual abuse and she has been prescribed anti-acid tablets and anti-anxiety tablets. Her GP has diagnosed her with extreme anxiety disorder as a result of the sexual abuse.

Since age 12 she has suffered with persistent and chronic pain. She had a suspected diagnosis of endometriosis and underwent three gynaecological surgeries. Her surgeon concluded that she did not have endometriosis however her uterus was inflamed and enlarged without medical explanation.

Since childhood she has suffered with severely disrupted sleep. She became angry with herself, her parents and her aunt. She began an unhealthy relationship with food and engaged in self-destructive behaviour. At age 13 she began self-harming by cutting her wrists with a Stanley blade and hiding the scars.

She qualified as a veterinary nurse and used to comfort herself with the knowledge that she had access to drugs which she could use to end her own life if necessary.

She still has a fear of being a passenger in a car and avoids other triggering stimuli such as the sound of heavy breathing or the tone of men's voices similar to that of the Appellant."

16. The complainant had been in contact with TUSLA since the 1st of September 2018, largely because she was afraid that since the appellant had entered into a new relationship that other children may be at risk. Thereafter she made complaints to Gardaí in 2019. On foot of this, the appellant's home was searched on the 22nd of November 2019 whereupon he was arrested. The appellant was interviewed by Gardaí, wherein he made various admissions; these were limited in respect of the age of the complainant in an attempt to minimise the length of the abuse and youth of the complainant when the offending first began. Effectively the appellant claimed that the abuse only started when the victim was about 13 and that it only went on for two to three years. The appellant claimed that he did not know what he was doing was criminal conduct. The appellant denied that he had touched the victim against her will and claimed that the victim was accusing him of things which he had not done. He claimed that the abuse had started when the victim was in secondary school. He admitted to penetrating the victim's vagina but claimed that this had only happened on one occasion. He denied ever touching her in his shed. It was only when the appellant was arraigned on the 14th of July 2020 that he pleaded guilty to the already outlined counts on the indictment which comprise a twelve-year period of abuse starting from when the complainant was just a child.

17. We think that the aggravating factors can be correctly summarised as: the repeated offending over many years, the age disparity (the complainant was a child in primary school when the offending commenced); the appellant groomed the complainant over many years to the point that even in adulthood, she was subjected against her will to abuse; the state of fear if not terror into which she was rendered on a constant basis so far as any dealings with the appellant were concerned, the fact that the appellant systematically manufactured opportunities for offending in circumstances where because of the relationship the complainant's parents had no concerns about the fact that the complainant was in his company. She found herself in his care unsupervised in circumstances where over time the wrongdoing was having an increasing harmful effect upon her, the fact that some of the offences occurred in her own home where above all she ought to have been safe and the appalling harm done and was ruinous of a happy childhood.

18. In considering the mitigating factors, the principal mitigating factors are the cooperation and admissions, although limited, made to both Gardaí and TUSLA. There are also the pleas of guilty, his remorse and the fact that the appellant had no convictions in respect of offences of this type prior to those under appeal and no previous convictions for other forms of offending. The judge was also cognisant of the fact that the appellant has a good employment record and that he is not a young man nor in good health. The age and health of the appellant was the factor most strongly emphasised on his behalf. The appellant's ailments were said to include, according to his general practitioner that he "*has had poor health ever since he started work in 1968 and during this period of time has developed exogenous depression resulting in anti-depressant medication. At present he lives on his own -- a solitary life -- does not have any friends and has great difficulty in coping with everyday stress*". We are told that he has received medical treatment whilst in prison and whilst this would have made imprisonment more onerous. Furthermore the Probation Report stated that he was at a low risk of reoffending and could engage with rehabilitation through entry into the Safer Lives Programme. The appellant also undertook, after engaging with TUSLA as part of a safety plan, a special treatment programme for adults who sexually abuse children with a social service called Cosc. The appellant had attended all his six available appointments as part of this programme and had engaged fully until appointments were cancelled as a result of the outbreak of Covid-19 and the course's discontinuation in June 2020. Theoretically the fact that the appellant was a so called upstanding citizen engaged with the community and his Church (as a minister of the eucharist) and engaged in charitable work are mitigating factors; however, he was effectively living a lie over many years and it is commonplace that this type of sexual offender is otherwise engaged in laudable activities; the extent to which these factors can be weighed in his favour are accordingly, to put the matter at its highest, of only the most modest significance, if any – indeed it might be argued that this is an aggravating factor.

19. It is also plain from the judgment that the judge took into account the seriousness and prolonged nature of the offending and the importance of the principle of deterrence in respect of such crimes when he said: -

"*There are …. points at which [the appellant] could have turned away from further offending but he continued with it, probably on the basis he just believed he'd never be caught, rather than considering what the likely penalties would be. But, for whatever reason, he continued on this for a very long period of time. I don't know what self-deception [the appellant] was able to impose upon himself to believe that this was behaviour that was anything other than evil but he obviously did. And, in those circumstances, it is appropriate that the Courts make it absolutely plain to deter anyone who's -- in the future who is seeking to engage in -- much self-deception that these are serious matters which will be dealt with by the Court; as grave matters which will carry significant punishment.*"

20. The judge for the purpose of sentencing divided the offences into what he called "three tranches" putting the matter thus "*probably best divided -- it's not perhaps an exact division -- but best divided by the amount of -- by the penalties that applied at the time*". On analysis of this approach he was effectively having regard to the complainant's age at the time of the offences. We cannot set out his very comprehensive judgment. Suffice it to say we think the approach he adopted was rational, comprehensive and had regard to all relevant matters. He applied the totality principle leading to the sentence of twelve and a half years imprisonment (itself arrived at by virtue of a number of consecutive sentences). He then suspended the last four years of that sentence giving rise to eight and a half years imprisonment.

Grounds of Appeal

21. The grounds of appeal relied upon are as follows: -

1. *The sentence imposed by the Learned Sentencing Judge was excessive and disproportionate in all the circumstances and placed undue emphasis on the aggravating factors and had insufficient regard to the mitigating factors and in particular;*

    a) *The Applicant's admission to TUSLA prior to being charged and/or interviewed by An Garda Síochána;*

    b) *The Applicant's admissions in interview;*

    c) *The Applicant's early plea;*

    d) *The Applicant's remorse;*

    e) *The Applicant's previous good history and personal circumstances.*

    f) *The Applicant's future prospects of rehabilitation.*

    g) *The Applicant's age and poor health.*

    h) *That the Applicant had no previous convictions.*

    i) *That the Applicant was at a low risk of reoffending.*

2. *The Learned Sentencing Judge erred in principle in adopting a method for constructing a disproportionate sentence, which was unclear.*

3. *The Learned Sentencing Judge erred in principle in failing to properly balance the sentences objectives of punishment, deterrence and rehabilitation.*

4. *The Learned Sentencing Judge erred in principle in failing to have proper regard to the totality principle when imposing consecutive sentences.*

5. *The Learned Sentencing Judge erred in principle in imposing a sentence which was disproportionate, overly punitive and inconsistent with the sentences for comparable offences of this nature.*

22. Given the considerable overlap, we shall deal with these matters together.

23. In the course of the oral submissions, reflecting those in writing, counsel for the appellant referred to a number of authorities with special reference, so far as offences of the present kind are concerned, to *DPP v P.R.* [2019] IECA 150 and the subsequent decision in *DPP v. A.M.* [2020] IECA 270. The former is an application for review of sentence pursuant to the provisions of section 2 of the Criminal Justice Act 1993 (a prosecution appeal) and the latter was an appeal by the accused. Counsel sought to make the case that the sentences imposed here were "*out of kilter*" with the sentences imposed in P.R.

24. In *P.R.* the victim was the accused's son and he was abused between the ages of 9 and 21 in the family home (with one exception); the abuse extended to masturbation by the accused of both himself and the victim and engagement in oral sex with the victim. An attempt was made at anal intercourse on one occasion. The assaults occurred on many occasions. The victim became depressed and suicidal and the offending had a devastating effect upon him. A sentence of five years was imposed on one of the offences charged the remainder being taken into consideration. Obviously, the counts were what we might describe as representative sample counts since there were only seventeen. This court took the view that a five-year headline sentence (as identified by the trial judge) was correct and that had this court been sentencing at first instance it would have suspended the final two years of such five-year headline sentence. Ultimately, in circumstances where the accused had served the sentence imposed upon him, had engaged in a programme of rehabilitation, prosecutorial delay had occurred in pursuing the appeal, the accused's sentence had been served giving rise to the application of the "*disappointment factor*" the court was of the view that exceptional circumstances pertained three years on the headline sentence was suspended.

25. *A.M.* is quite different, there is no suggestion that exceptional circumstances existed. Here there was an aggregate sentence of nine years imprisonment, the final twelve months whereof was suspended; the victim was the appellant's daughter and the offences occurred over a period of a year and a half when she was between 9 and 10 years of age. The offending was somewhat similar to that in the present case. Ultimately this Court took the view that the sentence was "*somewhat disproportionate in terms of the totality principle*" and quashed the sentence. A substitute sentence, as it was put, of eight years was imposed, the final year whereof was suspended – consecutive sentencing was necessary to achieve this end.

26. We think accordingly that having regard to the nature of the appeal in *P.R.* (one taken by the prosecution) and the strong emphasis on exceptional factors, it is not a worthwhile comparator; if there is a comparator, it is *A.M.* – notwithstanding that the abuse occurred over a period of 18 months, as opposed to many years, and a period of seven years in custody was the result, thus giving support to the more lengthy sentence here for exponentially more serious offending. There is no basis in this case, accordingly, for suggesting that the sentence was "*out of kilter*". We emphasise again that individual comparators are to be distinguished from cases where the Court has sought to set down general guidelines – it is the latter class of case that is likely to be of assistance.

27. Ultimately, the core issue in this case is, in truth, whether or not the trial judge correctly applied the principle of totality. Whilst it is debateable whether or not he articulated the rationale thereof correctly, he in fact did so apply it. It seems to us that there is no basis for criticism of his conclusions in respect of the three classes of offence in question or that he failed to have regard properly to both aggravating and mitigating factors. He rightly imposed consecutive sentences in respect of a number of the offences. No one could doubt but that in the application of the principle of totality he was right to significantly reduce the entire period to be spent in custody. We do not regard the suspension of a portion of the sentence as being of relevance as a matter of reality; the sentence of eight and a half years to be served is what we must address. We must do so on the basis of our judgement and experience in dealing with cases of this kind.

28. On the evidence, we are not persuaded that the judge fell into an error of principle; we think this is so notwithstanding the mitigating factors. The judgment was extremely careful and had regard to all relevant factors. Further, trial judges are given a margin of discretion. The offending on any view, over so many years, was very serious indeed and the consequences have been devastating; of particular significance is the fact that the grooming and manipulation of the victim was so gross as to effectively deprive her of the capacity to resist even as a young adult – a mark of the depravity of the appellant. It seems to us that the mitigating factors are not such as to mean that the judge fell outside his margin of appreciation in imposing a sentence of eight and a half years imprisonment to be served notwithstanding those factors. This Court might or might not have taken the view that a somewhat lower period of imprisonment to be served was appropriate; that is not relevant to whether or not an error of principle has been made.

29. We think that whether or not the sentence ought to have been one of eight and a half years simpliciter or the lengthier period with a suspensory period was the appropriate course is debatable. However, since the ultimate issue is in truth the period to be spent in custody, we will not interfere with the sentence as it is now constructed.