



THE COURT OF APPEAL

Record No: 63 CJA/21

**Edwards J.
McCarthy J.
Kennedy J.**

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 2 OF THE CRIMINAL
JUSTICE ACT, 1993**

Between/

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

APPLICANT

V

F.M.

RESPONDENT

**JUDGMENT of the Court (*ex tempore*) delivered on the 25th day of January, 2022
by Mr Justice Edwards.**

Introduction

1. The respondent the subject of this appeal appeared before Judge O'Donnabháin for sentencing in Cork Circuit Criminal Court on the 26th February 2021 following the entering of signed pleas of guilty in the District Court on the 10th of December 2020, with the affirming of those pleas on the 26th of February 2021, in respect of three offences, i.e., (i) sexual assault, contrary to s.2 of the Criminal Law (Rape)(Amendment) Act, 1990 as amended by s.37 of the Sex Offender Act 2001; (ii) inviting or inducing a child to touch the respondent's body for sexual purposes, contrary to s.4 of the Criminal Law (Sexual Offences) Act 2017; and (iii) contacting a child for the purpose of sexual exploitation of that child contrary to s.7 of the Criminal Law (Sexual Offences) Act 2017. All the offences were committed on the 4th of December 2018 when the victim was 14 years of age.
2. The respondent was sentenced to 2 years imprisonment in respect of each offence to run concurrently, with all sentences fully suspended for a period of 2 years on condition that the respondent enter into a bond to keep the peace and be of good behaviour and to refrain from having contact with the victim.
3. The applicant now seeks a review of the sentences imposed, pursuant to s.2 of the Criminal Justice Act, 1993, on the basis that they were unduly lenient.

Factual Background

4. The sentencing court heard evidence from Detective Garda Linda Lyons who outlined the circumstances of the offences which resulted in the injured party making a complaint of sexual assault against the respondent.
5. The respondent was a contemporary of the victim's sister and the two communicated through 'Snapchat' and it was through this connection that the respondent got to know the victim.
6. The offences occurred at an isolated seaside location on the south coast of Ireland on the 4th of December 2018 when the victim was 14 years of age and the respondent was 19 years of age. The respondent was aware of the victim's age as he had wished her a happy birthday on the 1st of December 2018, three days prior to the offence. Via 'Snapchat', he arranged to meet up with her on the 4th of December 2018. He collected her from a nearby village in his car and drove the short distance to the aforementioned seaside location.
7. At this location, and while in the respondent's parked car, the respondent kissed the victim, fondled her breasts and digitally penetrated her. He invited her to touch his penis and placed her hand on his penis. He asked the victim to have sexual intercourse with him, but she declined to do so and no sexual intercourse took place. There is no suggestion that the respondent subjected the victim to any form of duress, coercion or pressure to engage in sexual intercourse contrary to her wishes. In fact, the evidence was that respondent had stopped immediately when the victim intimated that she did not feel comfortable with the prospect of sexual intercourse. However, during the sexual encounter (not involving sexual intercourse) that had earlier taken place the respondent had become aroused and had ejaculated on to the victim's leg.
8. During the time that the respondent and the victim were in the car the respondent understood that the victim's older sister was aware that the victim was in his company. The older sister was not aware, however, of what they were doing or as to what their location was. The older sister did try to contact the victim to tell her to come home but was unsuccessful. The victim's sister eventually told her parents that her younger sister was in the respondent's company and they rang the guards.
9. When the victim returned home she was defensive of the respondent and stood up for him. However, the next day she disclosed to her mother the full details of what had occurred the previous day at the seaside location. This led to a complaint of sexual assault being made to gardai, who upon receiving it arranged for the victim to be examined and assessed at a sexual assault treatment unit ("SATU").
10. During the SATU examination semen was found on the victim's clothing and leg from which a DNA profile was generated which was subsequently determined to match that of the respondent.

11. Detective Garda Lyons stated that following receipt of the victim's complaint a garda investigation was conducted. She called to the house of the respondent on several occasions and subsequently found out that he had moved to England.
12. Jumping forward in the chronology momentarily, at a bail hearing following the respondent's eventual return and subsequent apprehension there was some dispute as to whether the respondent had travelled to England with his family and had stayed on there after they returned, or whether he had travelled there on his own. It was stated that the respondent and his family left for England on the 24th of December 2018 and that they had had no contact with the gardaí between the date of the (then alleged) offences and that date. However, Detective Garda Lyons had disputed this, stating in her evidence that she was informed by the respondent's brother on the 11th of December 2018, and by his mother on the 12th of December 2018, that he had left for England.
13. Returning to the point in the chronology where the gardai had learned that the respondent had gone to England, the gardai then made certain inquiries through Interpol and an address in Manchester was identified as his possible location. However, this address had been vacated by the respondent by the time the authorities called to it.
14. Subsequently, yet further inquiries were conducted locally during which it was established that the respondent had returned home of his own accord.
15. Detective Garda Lyons called to the family home of the respondent on the 19th of July 2020, and after several efforts to gain entry the guards were admitted and informed by the respondent's mother that he was not at home. Garda Lyons and her colleagues were sceptical of the truth of this representation and requested permission from the mother, as householder, to search the house and permission was granted. They found the respondent hiding behind an alcove in the sitting room.
16. The respondent was then arrested and conveyed to a Garda Station where he was detained and interviewed. While being interviewed he admitted that he had known that the victim was 14 years of age at the time of the offences, and that he had communicated with her via 'Snapchat' in relation meeting up with her, at which meeting the aforementioned sexual encounter had occurred. He cooperated fully with the investigation from then on.
17. In the District Court the respondent signed pleas of guilty and was refused bail. In August 2020, having spent a month in custody, the High Court granted bail on condition that he adhere to a curfew between 10pm and 7pm, that he refrain from using social media, that he live at home with his parents and that he have no contact with the victim. The evidence was that the terms of the bail were fully adhered to.
18. In December 2020 the respondent signed pleas of guilty to the three offences listed in paragraph 1 of this judgment, and he was sent forward for sentencing to the Circuit Criminal Court.

19. On the 26th of February 2021 the respondent, having affirmed his signed pleas, was sentenced in the Circuit Criminal Court to imprisonment for 2 years but fully suspended for 2 years upon conditions similar to, though not exactly replicating, those imposed during bail. The involvement of the probation service was not deemed necessary by the sentencing court. An order was made by the court prohibiting disclosure of the identity of the respondent in order to protect the identity of the victim.

Impact on the victim

20. The victim was supported in court by her family during sentencing and although she did not want to speak to the court directly she was happy for the judge to read her victim impact statement. The victim was 16 years of age and in her fifth year of school at the time of sentencing.
21. In her victim impact statement reference is made to the profound and destructive psychological impact the offences have had on her life, not limited to but including, self-imposed isolation especially in relation to male friends, sleep and eating disorders and a sense of wanting to die. The offences had a negative impact on her school work and her grades suffered. She considered herself useless and dirty and blamed herself for what had happened for a considerable amount of time after the offences. She stated that it took some time before she realised that she was only a child when the offences happened and that no 14 year old girl should be made to feel that way about herself.
22. She explained in her statement that she did not go outside for almost a year as she was afraid she might see the respondent and that he would commit the offences again.
23. She stated that she had attended a 12-week programme of counselling with Pieta House which she found beneficial. She nevertheless feels that the incident is a continuous burden on her and that she will live with the pain of it for the rest of her life.

Personal circumstances of the respondent

24. The respondent was born on the 1st of October 1999. He was 19yrs of age (just) at the time of the offences and was living with his mother, brother and sister. His parents were separated but he worked with his father in landscaping and was doing so at the time of his offending. He has no previous convictions.
25. He was said to have reacted badly to his parents' separation and this had an adverse impact on his formative years. The HSE had become involved, providing assistance to both his mother and to his school when the respondent started causing trouble and experimenting with drugs. Supporting evidence was provided in respect of this in the form of letters from the respondent's G.P, and from the HSE's Child Guidance Clinic covering the area in which he resides.
26. Through the combined involvement of the HSE, a garda outreach programme and the respondent's attendance at a residential treatment centre for boys with substance abuse and psycho-social problems, he did not progress to chronic drug addiction and by the end of 2016 was providing clear urine tests.

27. Following his return from England, and upon being granted bail by the High Court, respondent has found employment in the construction industry, showing a particular aptitude for carpentry. Prior to the onset of the Covid 19 pandemic he was offered an apprenticeship of four years duration by his employer. A letter from his employer was handed into the court.
28. During the sentencing hearing it was stated on his behalf that he is sincerely remorseful for what occurred and that he had addressed the victim in a letter apologising for what he had done.
29. The sentencing judge was provided with a positive testimonial from the respondent's employer.

Remarks of the sentencing judge

30. Before commencing his sentencing remarks, the sentencing judge sought, and received, confirmation from prosecuting counsel that the offending conduct had been confined to a single occasion. This gave rise to the following exchanges:

JUDGE: we're talking here about the contact being within hours of each other?

PROSECUTING COUNSEL: Oh yes. Correct. It's all been taken effectively as one episode.

JUDGE: One episode.

PROSECUTING COUNSEL: In that sense.

JUDGE: And they're -- I have no evidence of any previous contact or any build-up?

PROSECUTING COUNSEL: No. Nothing offered. Correct.

JUDGE: All right. Very good.

PROSECUTING COUNSEL: Other than the way [defence counsel] has outlined them.

DEFENCE COUNSEL: Which was innocent.

PROSECUTING COUNSEL: Yes, the innocent end of it. By the sister knowing him and so on and so forth.

JUDGE: Oh yes. No. No. No.

PROSECUTING COUNSEL: Other than that. No. No. No. That matters, Judge.

JUDGE: Very good."

31. The judge began his sentencing remarks by acknowledging the signed pleas that were entered in the District Court. He then said:

"And it arises out of an incident which occurred at [a specified location] in December of 2018. Now number one significance is, what happened at [the said location] on the 4th of December, was shortly thereafter reported by the young girl, who was then 14 years of age, because having come home, she realised that the contact between them was wrong, and she told her mother or her sister, or both, and as a result of which a complaint was made to the guards that there -- this man of 19, had engaged with her. He had sexually assaulted her, penetrated her with his finger, asked her for sex, ejaculated on her and that was the nature, the extent of the assault and the engage -- and the activity that he forced or that he put upon her. Now, a significant aspect of it is that he asked her to engage in penetrative sex, she refused and he did not advance the matter. He withdrew. So I take that into account. I take into account the nature, I mean penetrating with the finger is taking the assault to a higher level than the kissing, and the ejaculation is taking it to a significant level. So they -- this was a significant insult to this young woman. There is a difference in age. She was undoubtedly very young, being just 14 years of age, and he was 19. So he was an adult and she was a child. He was not an adult with any great experience, and I take that into account.

32. The sentencing judge then acknowledged the cooperation of the respondent in the investigation (once he was apprehended), his admissions, his pleas in the District Court and the fact that he had spent a month in custody. He further noted his lack of previous convictions and the fairly strict bail conditions to which he had adhered. The judge then took into consideration the respondent's troubled childhood:

"Now this young man's prior history is sad and was ongoing in relation to his reactions to his upbringing. There is undoubtedly -- he had significant interventions from the HSE and others, for drug addiction at a very early age, and other problems in dealing with disharmony and dysfunction in his own life. It appears that from 2016, given the help he received, he surmounted those difficulties, apparently became free of drugs, and was getting on with life. I understand he's now in employment and he's found by his employer to be suitable."

33. The sentencing judge then acknowledged the impact of the offence on the victim stating:

"One always worries about events of this nature and the protection of the young girl is foremost -- that is a foremost consideration in my mind. I've read her victim impact statement. There's no doubt that what she says is -- the effect that it had on her and the worries it caused her is undoubtedly true. I understand that she found great consolation from a 12 week course with Pieta House, which gave her a realisation into what was happening, but for a young girl, she had a lot to put up with, a lot to deal with, both in her own life and then it affected her school work. So I can understand all that, and I understand she is now progressing in school and hopefully successfully even in the context of the Covid. She feels that this is a burden on her continuously and one can accept that that is so."

34. In then proceeding to pass sentence the sentencing judge made these observations while doing so:

"Now I am to a certain extent impressed by the fact that the accused has no previous convictions, and he has not come to garda notice since, and in particular that he has not, in any way, directly or indirectly attempted to engage or contact the victim. In the circumstances, in view of the plea, I'm not in any way underestimating the seriousness of the offences, ... what is the range of penalties Mr --

PROSECUTING COUNSEL: Maximum 14 years on any of the three of them. Common to all three.

JUDGE: Very good. So in view of the seriousness of the offences, I will set a headline figure of two years for a first conviction on each count, which sentence I will suspend in its entirety on condition ... that he keeps the peace and is of good behaviour for a period of two years, that he has not, during that period any contact, direct or indirect, with the victim."

Grounds upon which a review of the sentences are sought

35. The applicant now seeks a review of the sentences imposed at first instance, contending that they were unduly lenient on the following grounds:

1. The sentencing judge erred in principle in imposing an unduly lenient sentence in all the circumstances.
2. The sentencing judge erred in law and in fact in failing to attach appropriate weight to the aggravating factors in the case. In particular, the learned sentencing Judge failed to have appropriate regard for the following factors;-
 - a. The manner in which the opportunity for committing such offences was created by the respondent.
 - b. The fact that the respondent knew in advance that the injured party was only fourteen years of age and well underage.
 - c. The fact of the element of significant pre-meditation to indulge in the behaviour to which the respondent signed pleas of guilty.
 - d. The fact and manner in which the respondent sought to evade apprehension for a significantly long time, and on the occasion when finally apprehended at home.
3. The sentencing judge erred in law and in fact in attaching undue weight to the mitigating factors proffered on behalf of the above named Respondent both as to his background and as to his subsequent behaviour and as to his medical circumstances.
4. The sentencing judge erred in law and in fact in determining a headline sentence for each of the said offences of two years, bearing in mind the seriousness of the

kinds of offences, and the maximum sentence provided, as a reflection of that level of seriousness.

5. The sentencing judge erred in law and in fact in failing to place initially the offences on the spectrum of seriousness for offences of this kind and in failing to have appropriate regard to the range of sentences appropriate to such offences, in his approach to sentencing.

Submissions on behalf of the applicant

Grounds 1, 3 and 4

36. Counsel for the applicant contends that the fully suspended sentence imposed by the sentencing judge demonstrates that insufficient regard was had to the aggravating factors associated with the offences at issue, significantly the offence of sexual assault which involved the inducing of the victim to masturbate the respondent to ejaculation and the digital penetration of the victim by the respondent.
37. Counsel for the applicant submitted that the gravity of the offences at issue is reflected in the maximum sentence applicable to all three offences, that of 14 years imprisonment and that the offences committed by the respondent should have been located above the lower end of the spectrum of gravity.
38. Quoting from O'Malley on '*Sentencing Law and Practice*' in relation to substantial aggravating factors accompanying sexual assault and the need for significant custodial sentencing, counsel for the applicant contends that, notwithstanding that some recognised substantial aggravating factors were absent from the offences at issue such that they were not to be placed at the highest point on the spectrum, there were however elements of grooming in that the respondent did befriend the victim, he acted in an abuse of trust, he did take her to a secluded place to commit the offence, fully aware that she was 14 years of age and he did leave the jurisdiction shortly after the offence to evade justice.
39. We were referred to *The People (DPP) v. D.C. [2015] IECA 256* as a suggested comparator. In D.C. the appellant had been communicating with the 14 year-old injured party by way of messaging. On the day of the offence the appellant collected the injured party in his car, brought the injured party to a secluded area and, ultimately, fondled the injured party's penis and induced the injured party to touch the appellant's penis over his trousers. This Honourable Court agreed that the sentence of six years with the final two years suspended was excessive and reduced the sentence to one of four years with the final two years suspended.

Ground 2

40. Notwithstanding the mitigating factors associated with the offending and the offender, being his young age at the time of the offence, his admissions and plea of guilty, his family difficulties and his lack of life experience, counsel for the applicant submits that undue and excessive regard was afforded to them and that the suspension of the

sentence in its entirety constituted an error in principle on the part of the sentencing judge.

41. Counsel further contends that how the court below treated the forbearance of the respondent in not engaging in sexual intercourse when it was objected to was erroneous. It is said that it was an error to regard this as a mitigating factor or significant mitigating factor warranting the suspension of the entirety of the sentence imposed.
42. In relation to the admissions made by the respondent during interviews, counsel submits that those said admissions fall to be considered in light to the totality of the evidence facing the respondent including identification of the respondent's semen on the leg and clothes of the victim and evidence from Detective Garda Lyons that he had absented himself from the jurisdiction for the express purpose of evading justice.
43. Whilst it was accepted that the respondent experienced difficulties in his earlier life it was submitted that they were not of such gravity as to bring him within the principles identified in *DPP v. Fitzgibbon* [2014] IECCA 12, and they did not warrant the suspension of the sentence imposed.
44. In all the circumstances counsel submits that the sentence imposed was unduly lenient.

Submissions on behalf of the Respondent.

Nature of initial contact/Evidence of grooming

45. Counsel for the respondent submitted that the respondent and victim befriended each other in circumstances that were not viewed as sinister, where the respondent was a contemporary of the victim's sister and where the respondent, victim and victim's sister communicated with each other by means of the social media platform 'Snapchat'. In that regard the sentencing judge had sought to establish as a preliminary matter that there was no suggestion of grooming or pre-meditation in these communications, and had been satisfied that there had been none.
46. Counsel for the respondent has suggested that *The People (DPP) v. D.C* [2015] IECA 256 is distinguishable from the present case in that communications between the defendant and the victim in that case were of a sexualised nature including video and explicit photographs.

Absence of penetrative intercourse

47. Counsel for the respondent submitted that the conduct of the respondent in not engaging in sexual intercourse was not in fact treated by the sentencing judge as a mitigating factor. On the contrary:
 - (a) *it was a factor that was discussed as part of the description of the acts in a manner which was entirely normal and appropriate;*

- (b) *it was part of the interaction between the respondent and injured party, and as such was relevant as it pointed away from any suggestion of duress, coercion or pressure;*
- (c) *the more serious elements of the assault were recited and given due weight; and*
- (d) *the transcript does not, in any event, bear out a conclusion the honourable sentencing judge treated this factor as a mitigating factor, still less the factor which led to the sentence being suspended.*

Respondent's Co-operation/Interview/Approach to the charges

- 48. Counsel submits that the admissions made during interview were genuine in nature in circumstances where there was no evidence put forward by Detective Garda Lyons that the respondent was aware of the existence of incriminating forensic evidence at the time of the interview. It was suggested that following his arrest the sincerity of his co-operation is evident in the way he conducted himself to ensure that the victim did not have to face trial.
- 49. Notwithstanding that the respondent travelled to England shortly after the offence, in what the District Court during a bail hearing viewed as an attempt at evading justice, and as a consequence served one month in jail, he thereafter complied strictly with the bail conditions imposed by the High Court. Referencing *DPP v. Cambridge* [2019] IECA 133 and *DPP v. O'Callaghan* [2020] IECA 172 counsel submitted that it was correct to treat this adherence, along with the signed pleas of guilty entered when the matter was first listed in the District Court, as mitigating circumstances.

The Respondent's difficult adolescence

- 50. Counsel for the respondent sought to address counsel for the applicant's contention that the difficulties experienced by the respondent in his early life do not meet the level of gravity necessary to engage the principles enunciated in the *Fitzgibbon* jurisprudence. He pointed to the sentencing judge's remarks acknowledging that while the respondent had faced significant adversities he had, to his credit, overcome them. The sentencing judge noted:

"It appears from 2016, given the help he received, he surmounted those difficulties, apparently became free of drugs, and apparently free of drugs and was getting on with his life. I understand that he is now in employment and is found by his employer to be suitable."

- 51. It was submitted that this background information was highly relevant to the sentencing objective of rehabilitation, given the respondent's young age.
- 52. Referencing *The People (DPP) v. Farnan* [2020] IECA 256 counsel for the respondent submitted that the possibility of rehabilitation must always be a factor in any

consideration of the appropriate sentence, even in a case involving a grave offence warranting prioritisation of the objective of general deterrence.

53. Counsel for the respondent submitted that the well-established jurisprudence on s.2 undue leniency reviews requires that the reviewing court should attach great weight to the reasons for the sentence provided by the sentencing judge at first instance. It was submitted that it was within the sentencing judge's legitimate range of discretion, in the circumstances of this case, to have imposed wholly suspended sentences. While these were certainly lenient sentences, it was submitted that they were not so far outside the norm as to be unduly lenient.

The Court's Decision

54. The jurisprudence on undue leniency reviews is at this stage well-developed and well-established. Counsel for the appellant is correct in saying that the law requires that the reviewing court must afford deference to the stated reasons of the sentencing judge at first instance and afford them due and proper regard. As McKechnie J stated in *The People (Director of Public Prosecutions) v. Stronge* [2011] IECCA 79, "it is that judge who receives, evaluates and considers it first-hand the evidence and submissions so made."
55. The process is not the reverse of that applied in an appeal against severity of sentence. While it is true that in both types of cases intervention may be justified if there has been a substantial error of principle (and a sentence which is unduly lenient is *a fortiori* erroneous), it is not sufficient simply that the reviewing court disagrees with the sentence that was imposed and would, if it had been sentencing at first instance, have imposed a different sentence. Rather, the reviewing court must be satisfied that the sentence imposed constituted a substantial gross departure from what would be the appropriate sentence in the circumstances. It must've been clearly outside the norm, and usually the fact that is outside the norm can be attributed to a clearly identifiable error of principle.
56. The case before us is a difficult one. On the one hand it is clear legislative policy that sexual assaults and related offences involving injured parties who are children (the statutory definition of a child includes teenagers up to the age of 18) are to be particularly deprecated. The Oireachtas has provided that a teenager of the age of the victim in this case at the time of the offence is legally incapable of consenting to conduct said to constitute sexual assault, (or for that matter sexual intercourse, which doesn't arise in the present case), and where such an offence is committed it is cardinally ranked as potentially more serious than such an offence would be if the same offence had been committed involving an adult victim, and this is reflected in a higher range of potential penalties provided for. There is also express statutory protection against the sexual exploitation of children. Substantial maximum penalties are provided. In the case of each of the offences for which the respondent faced sentencing, the maximum penalty was 14 years imprisonment.
57. On the other hand, while the respondent in this case was legally an adult he had not long attained his majority. He had just turned 19 when he committed the offences. The trial judge described him as "*inexperienced*", which we interpreted as meaning that he had

little experience of life including of relationships and of treating girls with respect. Certainly, he did not meet the case well initially. While he clearly recognised an early stage that he had done serious wrong, rather than facing up to what he done and seeking to take responsibility for it he had sought to evade being brought to account. This might perhaps be explained by fear of the consequences, or a degree of immaturity or both. There is abundant literature suggesting that teenage boys and young men mature more slowly in terms of their emotions and emotional intelligence than teenage girls and young women. Of course, it varies very much from case to case. However, the point has been made many times in sentencing scholarship that the legal dividing line between childhood and adulthood is an arbitrary one, that the child does not fall off a cliff at age 18 and suddenly acquire all the necessary wisdom and experience to be a fully formed adult.

58. All that having been said, this respondent was legally an adult. Moreover, he had done serious wrong and knew that he had done serious wrong. He required to be censured. Arguably he also required to be punished in terms of being made to suffer some form of hard treatment in addition to being censured, possibly involving a carceral sentence or some other meaningful penalty. It might be said that this was required for general deterrence purposes but also for retributive purposes to impress upon this particular respondent that his conduct was completely unacceptable and had given rise to deserved punishment.
59. At the same time, he was a young man starting out in life who had no previous convictions. Ultimately, he did co-operate with the investigation. He presented at sentencing as remorseful, having signed pleas of guilty in the District Court. The signing of such pleas at the earliest possible opportunity represented a taking of responsibility, and facing up to what he had done, notwithstanding that initially he had sought to evade the gardai. In that sense they provided supporting evidence for the asserted remorse. Very importantly, in the trial judge's view, and there was evidence to support it, this was a once off incident, albeit a serious one, which was not the result of grooming or any kind of sexual predation. The parties had come into contact through the type of social media exchanges that are ubiquitous amongst teenagers these days. The respondent had initially been friendly with, or was at least an acquaintance of, the victim's sister, and had communicated with her through Snapchat. It is not suggested that these communications were in any way sinister or untoward. The evidence was that they were "innocent". It was through his association with the sister that he had later come to have Snapchat contact with the victim. The sentencing judge was clearly of the view that what had occurred was more in the nature of sexual experimentation, and desire and arousal that had got out of hand, than of sexual predation. He was entitled to form such a view on the evidence before him. In those circumstances we are satisfied that the headline sentences nominated by the sentencing judge were within his range of discretion.
60. In *The People (Attorney General) v O'Driscoll* [1972] 1 Frewen 351 at 359, Walsh J stated:

"the objects of passing sentence are not merely to deter the particular criminal from committing a crime again but to induce him insofar as possible to turn from a criminal to an honest life and indeed the public interest would be best served if the criminal could be induced to take the latter course. It is therefore the duty of the courts to pass what are the appropriate sentences in each case having regard to the particular circumstances of that case – not only in regard to the particular crime but in regard to the particular criminal".

61. Bearing this imperative in mind, the sentencing judge was obliged, given the circumstances in which the offences were committed, the youth of the respondent, the once off nature of the event, his lack of previous convictions, the fact that he has since secured good and meaningful employment, and the fact that he is not come to adverse Garda notice since the incident, to consider whether it would best serve the public interest to incarcerate the respondent. In doing so he was very sensitive to the position of the victim, and he properly acknowledged the significant psychological and emotional harm done to her. However, he ultimately concluded that society would be best served by a noncustodial disposition.
62. In arriving at his view, the sentencing judge was alive to the age difference between the respondent and the victim, which had meant they were not in an equal power relationship. There was in effect a relationship of trust which had been breached and this was an aggravating circumstance unquestionably. However, we consider that it was relevant, and in this respect we disagree with the submission made on behalf of the Director of Public Prosecutions, that the respondent had not sought to coerce the victim in any way to have sexual intercourse once she had rejected his request to do so. It was not a mitigating circumstance in the strict sense, but it was an important piece of contextual evidence from which the sentencing judge was entitled to draw reassurance that what had occurred did not represent targeted sexual predation. Clearly, if there had been targeted sexual predation the case would undoubtedly have merited a custodial sentence, and very likely a substantial custodial sentence, to be actually served.
63. There is no doubt but that the sentence imposed was a lenient one, indeed a very lenient one. However, if there is to be individualised sentencing then sentencing judges must have the discretion to apply wholly suspended sentences in appropriate cases. As the former Court of Criminal Appeal put it in *The People (DPP) v. McCormack* [2000] 4 I.R.356 at 359:

"Each case must depend upon its special circumstances. The appropriate sentence depends not only upon its own facts but also upon the personal circumstances of the accused. The sentence to be imposed is not the appropriate sentence for the crime but the appropriate sentence for the crime because it has been committed by that accused. The range of possible penalties is dependent upon those two factors."

64. The question for us ultimately is: was this case, on any view of it, one in which wholly suspended sentences might reasonably have been imposed? We have concluded that it was, and that the sentencing judge's decision to do so was within his legitimate range of

discretion. The reasons he expressed for imposing the sentences which he did were cogent, rational and based in the evidence. His sentences cannot therefore be said to have been sentences that were outside of the norm. We accept that they were lenient, but we are satisfied that they were not unduly lenient.

65. The application is dismissed.