

ROYAL COURT
(Samedi Division)

141.

29th July, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Blampied, Myles, Gruchy, Le Ruez, Rumfitt,
Potter, de Veulle, Jones and Quérée.

The Attorney General

- v -

Kevin Noel

Sentencing by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 21st June, 1996, following guilty pleas to:

- | | |
|-------------|--|
| 3 counts of | sodomy (counts 1, 4, 7). |
| 6 counts of | indecent assault (counts 2, 5, 8, 11, 13, 14). |
| 5 counts of | gross indecency (counts 3, 6, 9, 12, 15). |
| 1 count of | attempted sodomy (count 10). |

Age: 35.

Details of Offence:

Child X was a friend of defendant's son and visited the home regularly, often staying overnight. From X's 11th birthday onwards [February, 1994 to October, 1995] the defendant procured a sexual relationship with X. This included sodomy, oral sex [on each other] and mutual masturbation. Sodomy and oral sex took place once or twice a month for the whole period. Specimen charges [Counts 1-9].

Child A [12 or 13] in 1988 was the subject of mutual touching and masturbation together with attempted sodomy which stopped when it proved too painful. [Counts 10-12].

Child B [8] in 1993 was indecently assaulted by the touching of private parts over clothing when B was camping in a tent with the defendant and his son. [Count 13].

Child C [10 or 11] subject to indecent assault and gross indecency by the defendant touching the child's genitals over his clothing and each masturbating in the presence of the other. [Counts 14 and 15].

Aggravating circumstances included:

- [i] Emotional and psychological damage to the victims.
- [ii] Breach of trust - defendant abused trust placed in him by the parents of his son's friends.

[iii] Period of the offending and repetition of sexual activity. Regular sexual activity with X once or twice a month. The offences in relation to the other children showed that the conduct went back many years and was not confined to one child with whom the defendant claimed a loving relationship.

Details of Mitigation:

Plea of guilty; spared the children the ordeal of giving evidence. Remorse and a desire for treatment. Defendant concerned that the children would themselves become abusers in due course. Not the most serious breach of trust compared with, say, a teacher. Loving relationship with X. Family had suffered but were standing by him.

Previous Convictions: Minor previous convictions; none for sexual offences.

Conclusions:

Count 1 : 7 years' imprisonment	
Count 2 : 3 years' imprisonment	
Count 3 : 4 years' imprisonment	
Count 4 : 7 years' imprisonment	
Count 5 : 18 months' imprisonment	
Count 6 : 18 months' imprisonment	
Count 7 : 7 years' imprisonment	
Count 8 : 3 years' imprisonment	
All concurrent	
TOTAL : 7 years' imprisonment.	
	Count 9 : 4 years' imprisonment
	Count 10 : 4 years' imprisonment
	Count 11 : 2 years' imprisonment
	Count 12 : 2 years' imprisonment
	Count 13 : 1 year's imprisonment
	Count 14 : 18 months' imprisonment
	Count 15 : 18 months' imprisonment

Sentence and Observations of the Court: Conclusions granted.

The Attorney General.
Advocate C.P.G. Lakeman for the accused.

JUDGMENT

5 THE DEPUTY BAILIFF: Noel has pleaded guilty to three cases of sodomy,
five cases of indecent assault, six cases of gross indecency and
one case of attempted sodomy. He is 35 years of age; apparently
when he was four years old he was sodomised by a stranger in the
wooded area above the People's Park. Furthermore, when he was
seven, he was indecently assaulted by an older girl. At the age
of nineteen he was also involved in a car accident in which a man
died and that proved traumatic. He married in 1991 and has two
children aged 10 and 8; the eight year old suffers from spina
bifida and has had to undergo extensive surgery. Noel is in
10 financial straits; he was estranged from his wife, although
Advocate Lakeman told us this morning that he has been reconciled
with her and his family while he has been in custody. He has also
not worked since June, 1994, due to problems with his knees which

have required surgery. He has five previous Court convictions but none of these are important because they do not involve sexual offences.

5 In 1983 he received a caution at a Parish Hall inquiry following an indecent assault on a nine year old boy. The present offences have come to light because of information supplied to the police in November, 1995. That information concerned an indecent relationship with a child X. The results of the detailed investigation have revealed offences against four children, the four children involved here, and we have carefully read the victim assessment reports - one is now 13, the other is now 11 and there are two older persons involved - one now 15 and the other 20, but when these victims were abused by Noel they were all aged between 8 and 12 years old.

15 There is some dispute between Noel and three of the victims, but as there is little difference in the version of Noel and the first child, (whom we have called child X) we agree with the Attorney General that nothing would be achieved by entering into a disputed hearing. Child X is now 13 and the charges brought against Noel in relation to child X are specimen charges but they involve sexual activity on a regular basis. He submitted this young child to acts of sodomy, indecent assault where he touched or masturbated him, and gross indecency where he induced child X to masturbate or commit oral sex on him, or indeed to attempt anal intercourse. Noel has admitted to committing acts of sodomy on child X which commenced when X was 11 years old. The acts of sodomy took place during a period of two years and occurred at least once or twice a month. He has also admitted acts of oral sex on X, again approximately once or twice a month, over a period of some two years. What is particularly chilling about these accounts is that X's mother allowed Noel to take her son camping. He had after all a son of his own and she had total trust in Noel and his care of her own son.

20 There is evidence before us of Noel - as is common with paedophiles - actually grooming his victims before sexually assaulting them. All the children abused by Noel with the exception of A, came into contact with him because they were friends of Noel's son.

25 Sodomy and fellatio have always been - and rightly been - regarded by this Court as very serious offences. It must be said that we have a particular abhorrence not only of these revolting acts but also because of the effect they may have on young children. There is a very real fear of the corruption of these children and the severe emotional damage that has been caused to them.

30 We have had regard to A.G. -v- Bouhaire (17th July, 1990) Jersey Unreported; (1990) JLR N.21; A.G. -v- Maguire (26th

September, 1991) Jersey Unreported; (1991) JLR N.13 and A.G. -v- McCormick (2nd June, 1995) Jersey Unreported. We will examine for a moment what can be said to aggravate these offences and what can be said to mitigate them and, if we may say so at this stage, Mr. Lakeman has done all that he possibly could by way of mitigation for his client.

From the reports before us it seems likely that the terrible abuse inflicted on child X will, in the words of the Child Care Officer, whose report we have read, have a long term detrimental effect on his development and his ability to form relationships which will only be partially mitigated by further counselling and support. In these acts of sodomy we must recall that they involved full penetration and Noel did not use a condom which has meant the further distress of HIV tests for the child which, mercifully, have proved negative.

We have also had regard to the trust that clearly was implied between the parents of three of the children who knew Noel through his own son. We entirely agree with the learned Attorney when he says that there was a considerable element of trust in the relationship which Noel frequently abused. The length of time during which the acts of sodomy and other associated acts took place on child X was some 18 months and, as we have said, sodomy was being committed once or twice a month. What the effect of these accumulated assaults will have in the long term is very difficult to imagine. Let us not forget that one of the victims of this depravity is now aged 21 and was referred to the psychiatric department in April of this year for increasing difficulties in controlling his temper. However, now that the abuse has come to light he has had further counselling and support is recommended to him.

By way of mitigation Noel is entitled to credit for his guilty plea which has spared these victims the further horrendous ordeal of having to give evidence in this Court. It is also true that he wrote to child X, at Advocate Lakeman's suggestion, that he co-operate fully after he had been arrested. It is also the case that, in making full admission in respect of child X, he finally admitted the offences for which he is charged in respect of children A, B and C. He has no previous conviction for sexual offences and apart from his surprising caution at the Parish Hall in 1983 that we mentioned earlier, although we must recall when we say that, that these offences went unreported for many years. Noel is clearly a danger to young people; in our view he should be treated with the abhorrence that a detailed examination of these offences warrant. We say that even though we accept that the Crown is content to be sentencing Noel on his version of events, particularly in regard to the other children.

In the Attorney General's Reference 43 of 1994 [1995] 16 Cr.App.R(S) 815 (Robert John Smith), the Court of Appeal

considered the case of R. -v- Willis [1974] 60 Cr.App.R. 146 and said this at p.820 of that report:

5 *"Willis was a case in which this Court gave some guidance
as to the level of sentencing for an offence of this kind,
where there were no aggravating or mitigating
circumstances out of the ordinary. A bracket of three to
10 five years as a starting point was mentioned. In the
course of that case Lawton L.J. pointed out some matters
(not an exhaustive list) which might aggravate the case
and other matters of mitigation.*

15 *However, the learned judge does not seem to have been
referred to later cases where there have been aggravating
features, taking the level of sentencing considerably
higher than the starting point of three to five years. We
20 have looked at a series of cases - we do not propose to
cite them individually - but it is quite clear, and it was
accepted as being clear, that the range of sentences in
those cases, where there were aggravating features, was
somewhere between six and 10 years".*

25 There, in England, we had on the Attorney General's Reference
a substantial increase by the Court of Appeal and we note that in
that case the buggery offence was increased from 3½ years to 7
years.

30 We have examined the case of R. -v- Pearce [1988] 10
Cr.App.R(S) 331, but that case, we feel, turns on its particular
facts and we have examined the Jersey cases that have been cited
to us. It is clear, from the authorities, that we have a wide
discretion. This is a very serious case. We have no doubt,
however, that Noel, although he may be of limited intelligence,
35 suffers from no mental disturbance or abnormality and as was said
in A.G. -v- Bouhaire he is entirely sane and responsible for his
actions.

40 We have been given some general guidance about sentence and
in particular the general guidance that is contained in R. -v-
Willis, (indecent assault) where the Court felt that sentences
should reflect the seriousness of the assaults. We have a duty to
society and we must add that no sane member of society could be
anything other than revolted by these continuing acts of sodomy
and oral sex on a young child.

45 We have no doubt that the learned Attorney is right in
recommending concurrent sentences. What we must do is to look at
the totality of the sentences and whether we use a method of
consecutive sentencing or concurrent sentencing in reaching that
50 totality is not in our view important.

Finally, we have considered the urging of Mr. Lakeman that we should perhaps take the sentencing down a year - but we can see no reason whatsoever to do that - and we did at one time consider whether we might increase the sentence.

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Noel, stand up, please. On count 1, you are sentenced to 7 years' imprisonment; on count 2, to 3 years' imprisonment; on count 3, to 4 years' imprisonment; on count 4, to 7 years' imprisonment; on count 5, to 18 months' imprisonment; on count 6, to 18 months' imprisonment; on count 7, to 7 years' imprisonment; on count 8, to 3 years' imprisonment; on count 9, to 4 years' imprisonment; on count 10, to 4 years' imprisonment; on count 11, to 2 years' imprisonment; on count 12, to 2 years' imprisonment; on count 13, to 12 months' imprisonment; on count 14, to 18 months' imprisonment; on count 15, 18 months' imprisonment; all concurrent, making a total of 7 years' imprisonment.

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Authorities

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
p.96.

A.G. -v- Jouan (15th March, 1996) Jersey Unreported.

Jouan -v- A.G. (19th June, 1996) Jersey Unreported CofA.

A.G. -v- Bouhaire (17th July, 1990) Jersey Unreported; (1990) JLR
N.21.

R. -v- Willis [1974] 60 Cr.App.R. 146.

Attorney General's Reference 43 of 1994 [1995] 16 Cr.App.R.(S)
815.

R. -v- Pearce [1988] 10 Cr.App.R(S) 331.

A.G. -v- Maguire (26th September, 1991) Jersey Unreported; (1991)
JLR N.13.

A.G. -v- McCormick (2nd June, 1995) Jersey Unreported.

Attorney General's Reference 19 of 1992 [1993] 14 Cr.App.R.(S)
330.