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*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

A AND B

GILLEN J

[1] I commence by indicating that nothing must be published concerning this case which would serve to identify the identity of the victim or the accused children in this case.

[2] In this matter A and B have each pleaded guilty to robbery contrary to Section 8(1) of the Theft Act (Northern Ireland) 1969, carrying a maximum of life imprisonment, and wounding with intent contrary to Section 18 of the Offences Against the Person Act 1861, also carrying a maximum sentence of life imprisonment. In addition A has pleaded guilty to a count of indecent assault, contrary to Section 52 of the Offences against the Person Act 1861, carrying a maximum sentence of ten years imprisonment and B has pleaded to an offence of attempted rape, contrary to Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Common Law which carries a maximum sentence of life imprisonment.

[3] At the date of commission of these offences both defendants were "children" as defined by Article 2 of the Criminal Justice (Children) (Northern Ireland) Order 1998 ("the 1998 Order")both being 13 years of age .

[4] The victim in this case was a 19 year old female.

[5] On the evening of Monday 4 December 2006, she had entered Woodvale Park on her way home. The two accused followed her despite her efforts to keep them in front of her. At one point she was told that they had a knife and that she was to give over her bag. Not content with taking the bag off her, she was then grabbed by the shoulders and neck and pulled down into the bushes. She was then subjected to expletive laden and sexual comments. Having held her down and ignoring her attempts to reason with them, A then attacked her with a knife. Understandably she was terrified that

they were going to kill her. One of them pulled her trousers down and got on top of her in an attempt to rape her but was unable to do so. He then engaged in oral penetration and again tried to rape her. The other youth then exposed his penis to her whilst in close proximity. She was then told to remove her upper garments and the first youth then attempted to rape her again. The fact that the Crown in this case accepted there was no evidence of penetration occurred, and hence there was no charge of rape, does not dilute the horrific effect this whole matter must have had on this young woman.

[6] Fortunately the presence of a passerby appeared to have distracted them. Before leaving her they threatened her demanding to know where she lived. A said that if she told anyone they would come and shoot her. He then kicked her once or twice in the head with B joining in punching her to the stomach. A attacked her with a knife to the leg.

[7] Showing incredible presence of mind this young woman then managed to escape by rolling though some low bushes and running away.

[8] As a result of this ordeal she suffered multiple injuries including bruising to her forehead, left and right cheekbone, bridge of the nose and left elbow. There was a stab wound to above the left groin which required a suture and 16 separate stab punctures to the left thigh extending from the side to the back of the thigh. There were also two stab punctures of the posterior aspect of the left calf.

[9] I commence my sentencing comments in this case by paying tribute to the enormous courage of this young woman and to the dignified manner in which she has met this horrific ordeal. Inevitably she has suffered from post traumatic symptoms but it is a measure of the intelligence and strength of character of this bright intelligent woman that she has exhibited psychological insight and maturity to a degree way beyond that which one would have expected of one so young. I hope that all steps will be taken in the future to ensure that she receives the appropriate therapy and help advocated by Dr O'Rawe.

Legislation governing these offences

[10] Article 39 of the 1998 Order limits the sentencing powers of the court in respect of an offence falling outside the provisions of Article 45 of the 1998 Order to a maximum sentence of two years detention in a Juvenile Justice Centre when dealing with children.

[11] I am satisfied however that, with the exception of the count of indecent assault, these offences constitute "grave crimes" within the meaning of Article 45 of the 1998 Order.

[12] Section 45 of the 1998 legislation, where relevant, provides:

> "(2) Where –
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> (a) A child is convicted on indictment of any offence punishable in the case of an adult with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law; and
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> (b) The court is of the opinion that none of the other methods in which the case may be dealt with is suitable,
>
> the court may sentence the child to be detained for such a period as may be specified in the sentence; and where such a sentence has been passed the child shall, during that period, notwithstanding any other provisions of this Order, be liable to be detained in such place and under such conditions as the Secretary of State may direct.
>
> …
>
> (4) The Secretary of State may by order direct that a person in respect of whom the Secretary of State is authorised to give directions under paragraph (2) shall be transferred and detained in a juvenile justice centre specified in the order.
>
> (5) An order under paragraph (4) shall be an authority for the detention in that centre or in such other centre as the Secretary of State may determine of the person to whom it relates until such time as may be specified in the order.
>
> (6) The date to be specified under paragraph (5) shall not be later than -
>
> (a) The date on which the person will, in the opinion of the Secretary of State, attain the age of 18; or
>
> (b) The date on which his detention under paragraph (2) would have expired.

(7) Nothing in paragraphs (4) to (6) shall prejudice the power of the Secretary of State to give directions under paragraph (2)."

[13] Article 46 of the 1998 Order provides as follows:

"**Discharge on licence**

46.-(1) Any person detained pursuant to the directions of the Secretary of State under Article 45(2) may at any time, be discharged by the Secretary of State on licence.

(2) Such a licence may be in such form and may contain such conditions as the Secretary of State may direct, and may at any time be revoked or varied by the Secretary of State.

(3) Where such a licence is revoked the person to whom the licence related may be arrested without warrant by any constable and taken to such place as the Secretary of State may direct."

Principles governing the interpretation of the legislation

[14] I have taken into account a number of principles in interpreting this legislation.

[15] First I bear in mind the contents of the Justice (Northern Ireland) Act 2002 c. 26 s.53 which provides, inter alia, as follows:

"**Youth justice**

Aims

Aims of Youth Justice ((1-5). In force on 1 December 2003)

53.-(1) The principle aim of the youth justice system is to protect the public by preventing offending by children.

(2) All persons and bodies exercising functions in relation to the youth justice system must have regard to that principle aim in exercising their functions, with a view (in particular) to encouraging children to

> recognise the effects of crime and to take responsibility for their actions.
>
> (3) But all such persons and bodies must also have regard to the welfare of children affected by the exercise of their functions and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development."

[16] I also take into account the general approach adopted in the United Nations Convention on the Rights of the Child ("UNCRC") and the Beijing rules, each of which the European Court of Human Rights has used as a source of guidance as to the requirements imposed by the European Convention in relation to proceedings involving juvenile offenders. I adopt the approach that children accused of committing crimes should be treated in a manner which takes into account the child's age, the desirability of promoting the child's reintegration and the child's assuming a constructive role in society; see HM Advocate v DP and SM (2001) Scot. HC.115 and R v N 2007 BNIL 21.

[17] In the context of the UNCRC and Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms, it is important to recognise that delay in bringing a child to trial if criminal proceedings are appropriate is highly undesirable and may result in prolonging the stress to which such a child may be subjected and retard the date to which his problems can be addressed. Moreover delay does not serve the victim well; see Procurator Fiscal v Watson (2002) 4 All ER 1 per Lord Bingham at paragraph 62).

[18] The youth and immaturity of an offender must always be a legitimate mitigating factor when passing sentence. On the other hand this must be tempered by the comments of the Northern Ireland Court of Appeal in Attorney General's Reference (No. 3 of 2006) Michael John Gilbert (2006) NICA 36. In that case a youth of 15 at the date of commission of the crimes pleaded guilty to offences including rape, grievous bodily harm and indecent assault. A sentence of 5 years custody followed by 3 years probation was substituted by a sentence of 7 years custody followed by three years probation. In considering the issue of age of an offender Kerr LCJ observed:

> "It appears to us that the youth of the offender will have a variable effect on the sentence according to the nature of the crime and the awareness of the individual defendant of the nature of the offending behaviour."

[19] The observations in Gilbert's case were considered and followed in the case of R v McKenna and Quinn (2007) NICC 15 where the defendants were each 16 years of age and four complainants were aged 15 years at the relevant date of offending. One of the accused was convicted of rape and sentenced to 8 years with concurrent sentences of 5 years for indecent assault and 3 years for false imprisonment.

[20] Counsel in this case also helpfully drew my attention to R v Asi-Akram (2005) EWCA Crim. 154 where the Court of Appeal in England and Wales observed, inter alia:

> "In all such cases youth will always be a relevant consideration. But the extent to which it calls for a reduction (and, specifically a 'significant' reduction), by comparison to a sentence which otherwise would have been passed on an adult, nevertheless remains to be assessed by the sentencing court by reference to the circumstances of the case."

[21] Mr Millar QC who appeared on behalf of the prosecution with Ms McKay, Mr Little who appeared on behalf of defendant A with Mr Gibson and Mr Harvey who appeared on behalf of the defendant B with Mr McCreanor, submitted that there were certain matters which must be observed in interpreting the 1998 Order. First, credit will not be given for the period already served in detention. Section 26 of the Treatment of Offenders Act (Northern Ireland) 1968 which makes specific provision for reduction in the duration of the length of imprisonment or detention in young offenders centre does not apply in cases such as this under the 1998 legislation when dealing with children. Secondly, whilst young offenders do benefit by way of remission of their sentences whilst serving same under the Treatment of Offenders Act 1968, no such provision applies to Article 45 of 1998 Order and thus children sentenced to be detained will serve the full period. For my own part I have some difficulty understanding why this should be so since the logic of affording credit for good behaviour in detention, which presumably underlies the principle of the granting of reduction, should arguably apply to children as well as older offenders. I also observe that I have no power to make a custody probation order in such cases. Nonetheless I must apply the law as it stands.

[22] Finally, a person convicted of an offence set out in Schedule 3 of the Sexual Offences Act 2003 and sentenced as per the provisions of Section 80(1) of the Act will automatically become subject to notification requirements. Section 82(2) of the 2003 Act imposes a requirement that a person under the age of 18 on the relevant date should be subject to notification for a period of half that relevant to an adult in similar circumstances.

Mitigating circumstances

[23] Having heard counsel in this matter on behalf of the accused, I have taken into account the following matters by way of mitigation:

(i) The age and immaturity of both defendants.
(ii) Their plea of guilty which has spared the victim the ordeal of reciting her evidence in the witness box. Although not entered at the first available opportunity it was entered once the serious charge of rape was no longer preferred.
(iii) There was some delay in this case coming to hearing whilst these children were in custody, but I think it has acted to their advantage in this case because it has allowed me to take into account developments in their cases as hereinafter set out.

[24] Both children have been remanded in the Juvenile Justice Centre (JJC) since 6 December 2006. In essence, had they been adults, this would have virtually equated to them having served a four year sentence to date.

[25] In relation to A, I have had the benefit of a number of reports including, inter alia, three from Fergal McMahon of the Youth Justice Unit of 10 September 2008, 6 November 2008 and 11 November 2008. In addition I have read three reports from a consultant child and adolescent psychiatrist of 7 October 2002, 16 December 2007 and 11 September 2008, a report from a consultant clinical psychologist of 29 September 2005 in relation to a care order and a further undated report from a consultant child and adolescent psychiatrist clearly written subsequent to March 2008. All of these experts have invested a great deal of time and effort into this child and this court is extremely grateful to each of them for the effort put in.

[26] As a result I am able to conclude that A has had an extremely difficult and problematic childhood exposed to inconsistent care with multiple care-givers providing parenting to him. At no time in his early life was there a constant attachment figure which is essential for development. He is clearly an extremely damaged and vulnerable young person who has not had the benefits of a normal family life or opportunities to develop within a stable and safe environment to realise his potential. The result has been that he suffers from a number of personality disorders for which a range of medications have been tried. These disorders, including ADHD, have contributed to impair his capacity to analyse, empathise, reflect or respond in a socially and morally appropriate manner. It came as no surprise to me therefore to note that he has a not insignificant number of previous convictions including theft, burglary, possession of an offensive weapon, criminal damage, and assault between 2004-2006.

[27] I was particularly influenced by a report from Dr Gallagher who concluded as follows:

> "I would wish the court to know that I have been impressed with A in terms of his increasing maturity and his emerging capacity to reflect on what has gone before and I would be hopeful that with proper therapeutic supports A's developmental trajectory can be fundamentally altered."

I regard that as a vital mitigating factor not only in looking at the welfare of this child but in considering my duty to ensure that the public are protected from his behaviour in the future.

[28] I have also taken into account in his favour the fact not only has he pleaded guilty, but that the strength of the prosecution evidence against him may have been questionable and accordingly his plea of guilty is especially worthy of credit.

[29] Turning to B, I am again indebted to the detailed and informed reports which have been made available to me from experts dealing with this child. These included a social work report of 22 September 2008, a number of reports culminating in that of September 2008 from the Juvenile Justice Centre, a probation officer's assessment and an analysis by Dr Bownes who reported on 3 October 2008 with a follow up letter of 11 November 2008. Once again the work put in by these experts has been of inestimable assistance to me.

[30] These reports allow me to conclude that this child has had an extremely challenging upbringing, not being within the normal familial setting. From an early age he has displayed evidence of significant problems regarding his behaviour, social development and academic progress. This has resulted in his referral to mental health professionals at primary school and four admissions to psychiatric units between the ages of 8 and 11 years old. The clinical picture presented has been considered to be of a complex nature including features of attention deficit, hyperactivity disorder, conduct disorder and attachment disorder. He has also been involved in previous offences of robbery, criminal damage, theft, possession of a class C drug and assault during 2006/2007.

[31] However this boy has reacted very positively to offence focused assessment carried out within Woodlands Centre and the experts there have now reason to believe that he may be more amenable to treatment by the specialist team involved. They are optimistic that they can intervene meaningfully in this instance. The senior forensic psychologist has strongly

recommended that this boy remain in Woodlands and that the required intervention is carried out by the therapeutic staff team involved with him.

Guideline cases

[32] Helpfully counsel drew my attention to a number of guideline cases including R v W (2003) 1 Cr App R(S) 502, R v McKenna and Quinn (2007) NICC 15, Gilbert's case, Attorney General's Reference (No. 31 of 2000 Leigh Terry) (2001) Cr App R(S) 112, Attorney General's Reference (No. 61 of 1999) 2000 1 Cr App R(S) 516, R v Haley 1998 2 Cr App R(S) 226, R v AM and Others (1998) 1 WLR 363, Attorney General's Reference (No. 18 of 1998), R v Ezra James Wright, and Attorney General's Reference (No. 61 of 1999), R v B (Wayne) (A Juvenile) – 2000 1 Cr App R(S0 516).

[33] Mr Millar QC also helpfully indicated that the guideline cases suggested that the sentencing bracket in this instance was a period of detention of 5-7 years, a suggestion to which counsel on behalf of A and B did not take exception.

The sentence of the court

[34] Were it not for the tender years, immaturity and background of these children at the time of the offences together with the mitigating factors which I have mentioned, the condign punishment in this case would have been far in excess of the figures that I now intend to impose. This was a heinous offence which will have long lasting impact on the victim to whom I have already referred. However the weight of the expert evidence which I have read has served to persuade me that when dealing with these defendants who are so young the best way to protect the public in the future and to secure their rehabilitation in society is to make provision for a combination of detention and treatment for their respective conditions at this stage with the opportunity for carefully monitored and licensed release thereafter for some years.

[35] I am also conscious that almost two years detention has already been served by these children and they will not receive any remission for the period of detention I now intend to impose. I have determined that I shall sentence each of the defendants in this case to be detained for a period of 6 years. That is the sentence that I impose on all of the counts against B and on the counts of robbery and wounding with intent against A. In relation to the offence of indecent assault against him I have determined that he will be detained for a period of 18 months concurrent with the other periods of detention. In terms therefore all of these sentences will be concurrent, the total in each case being 6 years detention. I have decided not to draw any distinction between the two of them in the length of time for detention. Although A has been convicted of indecent assault and B an offence of

attempted rape, A's involvement in the offence of wounding with intent was greater than B's involvement. For the purposes of clarity and without apology for repeating this point, I make it clear that had they not been only thirteen at the time of the commission the sentences of detention would have been far greater. Indeed given that they have already been detained for almost two years without the benefit of remission and my view that they should be detained until 18 before release on license will be contemplated, again without remission, this would amount to an equivalent sentence of 9 years or thereabouts for a youth offender or an adult.

[36] It is my recommendation to the Secretary of State that each of these children be detained at the Juvenile Justice Centre until the age of 18 and that thereafter they be discharged on licence, the licence to contain such conditions as may be suggested at that time by the experts who have been dealing with them. In making these comments, I draw attention to the decision of the Northern Ireland Court of Appeal in An Application by Colin King for Judicial Review (2002) NICA 48. In particular I draw attention to paragraph 40 of the judgment of Nicholson LJ who was in that case dealing with the recommendations of the judiciary in the context of the Life Sentences (Northern Ireland) Order 2001 and Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms.

[37] I now invite counsel to address me on the question of registration of these children on the Sexual Offenders Register.