[2021] JMCA Crim 20

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MISS JUSTICE EDWARDS JA
THE HON MR JUSTICE BROWN JA (AG)

SUPREME COURT CRIMINAL APPEAL NO 44/2015

DEVON RICKETTS v R

Ian Wilkinson QC, Mrs Dionne Jackson-Miller and Lenroy Stewart instructed by Wilkinson Law for the appellant

Jeremy Taylor QC and Ms Camelia Larmond for the Crown

11 and 21 May 2021

BROOKS P

[1] On 22 June 2015, Mr Devon Ricketts was, for the offence of incest, sentenced to imprisonment for life at hard labour, and ordered to serve 15 years before becoming eligible for parole. Mr Ricketts was also sentenced to five years' imprisonment at hard labour for indecent assault. He was sentenced pursuant to the, then relatively recent, Sexual Offences Act ('the Act'). The maximum penalty for incest was previously five years' imprisonment at hard labour, as stipulated by the, now repealed, Incest (Punishment) Act. The issue raised by his appeal against his sentence for incest is whether it is excessive.

The circumstances of the offences

[2] The person with whom Mr Ricketts had sexual intercourse was his daughter, C, whom he took to live with him during 2011 and for a portion of 2012, after her mother had gone overseas. C was then between 13 and 14 years old. She testified that on a day in 2011 Mr Ricketts rubbed his penis between her thighs, but did not insert it in her vagina. On Saturday, 30 March 2012 he called her to the place where he usually slept, told her to take off her clothes and then had sexual intercourse with her. He threatened to kill her if she told anyone. She reported the matter to a guidance counsellor at her school. The guidance counsellor called the police and, on 5 April 2012, Mr Ricketts was arrested and charged with the offences of indecent assault and incest.

[3] On arraignment, he pleaded not guilty to both offences and the trial commenced in the Circuit Court for the parish of Clarendon. In an unusual twist, the child's mother, testified that Mr Ricketts had been her own stepfather and had sexually and physically abused her when she was a child. His method of operation with her was the same as that with C. The sexual abuse resulted in a pregnancy, and the birth of C. Paternity was confirmed by DNA testing, which was carried out as part of the investigation into C's complaint. The DNA testing revealed that there was a 99.99% probability that Mr Ricketts was C's father. He had also represented himself, as C's father, to the school that she attended.

[4] On 19 December 2014, long after the events with the mother, Mr Ricketts was convicted for two counts of carnal abuse in respect of those events and was sentenced to four years' imprisonment. He was serving those sentences when he was being tried for the offences against C.

[5] At the close of the prosecution's case, defence counsel asked for Mr Ricketts to be re-pleaded. He then pleaded guilty to both the offences.

The sentencing exercise

[6] The learned judge indicated that she knew that she should consider the retributive and rehabilitative elements of sentencing "and other considerations". She found that the aggravating factors outweighed the sole mitigating factor, which she found to be the late guilty plea. She said that she bore in mind the previous convictions for carnal abuse. In imposing the sentences, the learned judge noted that the guilty pleas were very late. She nonetheless took them into account. In that context, she ordered that the sentences should run concurrently rather than consecutively. She also said that she bore in mind that he was serving sentences at the time for the carnal abuse of C's mother. She ordered that the sentences that she imposed should run concurrently with the sentences that he was then serving.

The appeal

[7] Mr Ricketts applied for leave to appeal against the sentences. A single judge of this court refused his application in respect of the sentence for indecent assault but granted it in respect of the offence of incest.

[8] In pursuing the appeal, learned counsel for Mr Ricketts argued three supplemental grounds of appeal, namely:

> *"i. In sentencing* [Mr Ricketts]*, the learned Judge erred in law in failing to identify the normal range of sentences for incest and an appropriate starting point within that range to sentence* [Mr Ricketts]*;*
>
> *ii. in sentencing* [Mr Ricketts]*, the learned Judge erred in focusing disproportionately on* [Mr Ricketts'] ag*gravating factors and failing to give due and sufficient regard to* [Mr Ricketts'] *mitigating factors especially* [Mr Ricketts'] *guilty plea. In doing so the learned Judge wrongly concluded that other than* [Mr Ricketts'] *plea of guilt: "there are no other mitigating factors that I can take into consideration." This error contributed to* [Mr Ricketts] *not receiving a fair sentence; and*

iii. the learned Judged erred in imposing a sentence that was manifestly excessive in the circumstances." (Italics as in original)

The grounds will be considered in turn. It is important to note, however, that section 7(4) of the Act stipulates that the maximum sentence for incest is imprisonment for life.

The failure to state a normal range of sentences and an appropriate starting point (supplemental ground i)

[9] Mr Wilkinson QC argued this ground on behalf of Mr Ricketts. He pointed out that the learned judge did not state the normal range of sentences for the offence or an appropriate starting point. In pointing out these departures from what is now considered standard practice in sentencing (see **Meisha Clement v R** [2016] JMCA Crim 26), learned Queen's Counsel accepted that, in cases involving relatively new legislation, there would be challenges in ascertaining a normal range of sentences and fixing a starting point. Mr Wilkinson, however, pointed out that F Williams JA in **Kurt Taylor v R** [2016] JMCA Crim 23 stated, at paragraph [41] of his judgment, that in such circumstances, "the sentencing judge will have to do the best that he or she can do [sic], [but] that starting point ought never to be the maximum sentence".

[10] Despite the fact that this case was decided before **Kurt Taylor v R**, Mr Wilkinson submitted that when the learned judge imposed the maximum sentence on Mr Ricketts she breached that principle, set out by F Williams JA in **Kurt Taylor v R**. He submitted that this breach resulted in the learned judge imposing a sentence that was manifestly excessive.

[11] Ms Larmond, for the Crown, accepted that the learned judge did not set out a range of sentences or a specific starting point, but she argued that nothing in the transcript suggests that the learned judge used the maximum sentence set out in the Act as the starting point. Ms Larmond submitted that the learned judge only made an enquiry to demonstrate to Mr Ricketts, the seriousness of the offences.

[12] In analysing these submissions and the relevant material, it must be noted that this case also predated **Meisha Clement v R** and therefore the learned judge did not have the benefit of the structured approach set out by Morrison P in that case. Nonetheless, there was guidance available to the learned judge in the judgment of this court in **Regina v Evrald Dunkley** (unreported), Court of Appeal, Jamaica, Resident Magistrates Criminal Appeal No 55/2001, judgment delivered 5 July 2002. In **Evrald Dunkley**, P Harrison JA, as he then was, set out the process that a sentencing judge should undertake. After indicating that the first step is to determine whether a sentence of imprisonment is the appropriate sentence, Harrison JA said, in part, at page 4 of the judgment:

> "If therefore the sentencer considers that the 'best possible sentence' is a term of imprisonment, he should again make a determination, as an initial step, of the length of the sentence, as a starting point, and then go on to consider any factors that will serve to influence the length of the sentence, whether in mitigation or otherwise. The factors to be condidered in mitigation of a sentence of imprisonment are, whether or not the offender has:
>
> (a) pleaded guilty;
>
> (b) made restitution; or
>
> (c) has any previous conviction.
>
> These factors must be considered by the sentencer in every case before a sentence of imprisonment is imposed."

[13] Mr Wilkinson is correct that the learned judge did not seek to identify a range and that she seemed to have used the maximum sentence as a starting point. Ms Larmond's submissions, on this point, cannot be accepted. The transcript shows that the learned judge considered the aggravating aspects of the offence and Mr Ricketts' mitigating circumstances, before considering any specific starting point. Having

considered those matters, her next step was to enquire of the prosecutor the maximum sentence for each offence.

[14] The flaw in Ms Larmond's submission is demonstrated by the fact that, apart from the reference to the maximum sentences for the offences, the learned judge did not indicate that she used any other reference point for her eventual sentence. After obtaining the answers to her questions about the maximum sentences, the transcript, at pages 204-205 records that the learned judge said:

> "So, Mr Ricketts, you would appreciate that the law does take a certain approach in relation to these offences, because for Indecent Assault it is a maximum of 15 years [sic] imprisonment that can be imposed upon you. And in respect of the Incest, it is life imprisonment. So you appreciate that the law does take these offences seriously and it's not just a little sex, as some persons want to believe and continue to believe that it is not really anything, but it is a great deal in the eyes of the law.
>
> Now, you are presently serving a sentence and when doe the sentence end?
>
> MR. L. MORRIS: I am advised, 2018.
>
> HER LADYSHIP: 2018. So, I also bear that in mind. In respect of the Indecent Assault, 5 years [sic] imprisonment at hard labour. In respect of the Incest, life imprisonment and the Defendant to serve a term of 15 years before becoming eligible for parole; both sentences are to run concurrently and concurrently to the sentence presently being served…."

[15] The learned judge did not specifically indicate any reason for starting at the maximum sentence. In this regard the learned judge erred.

[16] There is, therefore, merit in this ground of appeal.

The failure to give adequate regard to mitigating factors (supplemental ground ii)

[17] Mrs Jackson-Miller argued this ground on behalf of Mr Ricketts. Learned counsel submitted that the learned judge did not use a systematic approach to the sentencing, she only focussed on the aggravating factors of the offence and failed to identify the mitigating elements in Mr Ricketts' favour. Mrs Jackson-Miller added that, despite the terse plea in mitigation, made by defence counsel on behalf of Mr Ricketts, the learned judge was duty bound to identify the mitigating factors which arise. According to the submission, the learned judge should have considered in Mr Rickett's favour:

> "(a) No physical violence was used beyond that inherent in the offence;
>
> (b) [Mr Ricketts] was gainfully employed at the time of his arrest;
>
> (c) [Mr Ricketts] had two children who were dependent on him and who would be affected adversely if he was given a long period of incarceration."

[18] Learned counsel, in written submissions, also argued that the learned judge was in error to have considered a previous conviction that Mr Ricketts had for unlawful wounding. The conviction for that offence was in 1994. The written submissions stated that the "offence of unlawful wounding is a different type of offence and occurred long ago (1994). Consequently, it should not have been considered as an aggravating factor. It seemed, however, to have been considered as relevant by the Judge) [sic] -**See pg 202 lines 18 and 19 of the transcript**". (Bold type as in original)

[19] Mrs Jackson-Miller provided no authority for these submissions.

[20] Ms Larmond agreed that the learned judge should not have included a reference to the previous conviction for unlawful wounding unless she gave a clear reason for doing so. Learned counsel contended, however, that there were no mitigating factors

that warranted any reduction of Mr Ricketts' sentence. Learned counsel contended that bearing in mind Mr Ricketts' proclivities toward his minor children, the court has a duty to protect them from him. In so far as the absence of physical violence is concerned, learned counsel pointed out that any such absence was supplanted by the threat of violence that Mr Ricketts meted out to C.

[21] Ms Larmond is generally correct in these submissions. Ordinarily, a very old conviction for an unrelated type of offence is not taken into account during sentencing. The learned judge may well have taken the view that the sentence was neither very old, considering its proximity to when the offences were committed against C's mother or that it was a similarity in the offences in that they all represent a disregard to another person's entitlement to safety. She however did not say so.

[22] Nonetheless the learned judge's error in this regard is not egregious. It cannot be said that the learned judge placed any emphasis on the previous conviction for unlawful wounding. She said, in this regard, as is recorded at page 202 of the transcript:

> "You have no other mitigating factors that I can take into consideration. Because you have three previous convictions and two convictions, which were in the year, 2014, these are for offences of a sexual nature, involving young persons, young girls. So, Mr. Ricketts, there is not much that can be said in respect of mitigating factors in this case."

It is plain that the learned judge's emphasis was on the sexual offences.

[23] There is also some merit in the submission concerning Mr Ricketts being gainfully employed as a farmer. The learned judge did not mention that fact. She should have done so in considering Mr Ricketts' total picture for sentencing.

[24] Mrs Jackson-Miller's other submissions, however, are not as meritorious. The fact that Mr Ricketts used threats and intimidation to attempt to silence the child, nullifies

any absence of physical harm imposed on her, other than the sexual act. It is also to be noted that both C and her mother testified to that Mr Ricketts would beat them when they were under his control.

[25] The fact that an offender has dependants is one that a sentencing judge should consider as part of the overall consideration of sentencing. This was said at paragraph [136] of the judgment of this court in **Troy Smith v R** [2021] JMCA Crim 9:

> "The learned trial judge also rightly applied her mind to the fact that in sentencing the applicant, she had to consider such mitigating factors as age, antecedent records, employment, whether there were dependants, any remorse or contrition shown, if any, and that mercy had to be balanced with justice, in all the circumstances."

[26] An offender's status as a carer of children does not automatically mean that the court will give a benefit for that status. Where the offences are serious and demand a custodial sentence, the court is not obliged to make any deduction in that regard. This was said by Morrison P, who gave the judgment of the court in **Alpheus Wade v R** [2018] JMCA Crim 3:

> "[32] In the instant case, the appellant was convicted of the very serious offence of kidnapping for the purpose of extracting a ransom, involving the use of a firearm. In these circumstances, we considered that his position as a family man and father could not possibly prevail against society's interest in upholding the criminal law by showing its abhorrence for such conduct."

Morrison P relied heavily for that stance on the reasoning in **R v Boakye and others** [2012] EWCA Crim 838, where that court dealt with the consideration of "very serious criminal offences" (at paragraphs 29-32).

[27] In respect of the dependent children mentioned in the antecedent report on Mr Ricketts, there was also no evidence of any dependence on him other than financial dependence. The evidence led during the trial suggested that those children (assuming

that C was not one of those children), did not live with him. Following the reasoning in **Alpheus Wade v R**, and given the severity and nature of the offences, the absence of any evidence of any special bond with those children, is, therefore, another basis for refusing any deduction in his sentence.

[28] Mrs Jackson-Miller had other strings to her bow. She supplemented her arguments with two further contentions. The first is that the learned judge erred when she stated that there was "hardly any scope in respect of the rehabilitative aspect of things". The second is that the learned judge did not give the proper weight to the guilty plea.

[29] With regard to the rehabilitation, learned counsel contended that it was unfair for the learned judge to expect that Mr Ricketts would show prospects of rehabilitation when he had not had any exposure to any programme of rehabilitation so that his reaction could be assessed. The learned judge's consideration of rehabilitation as an aspect of sentencing, learned counsel submitted, was "very cursory".

[30] On the isssue of the treatment of the guilty plea, learned counsel complained that Mr Ricketts was entitled to a discount from his sentence as a result of that plea. Mrs Jackson-Miller submitted that the learned judge failed to demonstrate that she had given any consideration to whether Mr Ricketts should have been given a discount for the guilty plea. She agrued that although the guilty plea was very late, it did save some judicial time and the uncertainty of a verdict. That saving, learned counsel submitted is one of the aims of encouraging guilty pleas. The guilty plea, Mrs Jackson-Miller submitted, is also an expression of remorse. She relied, in part, on **R v Collin Gordon** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 211/1999, judgment delivered 3 November 2005.

[31] Ms Larmond did not address the learned judge's treatment of the rehabilitation, but submitted that, because the guilty plea was so late in the day, the learned judge

was not obliged to give any discount for it. She relied, in part, for these submissions on **Jermaine Barnes v R** [2015] JMCA Crim 3 and section 42H of the Criminal Justice Administration Act as it was amended in November 2015.

[32] The complaint about the learned judge's comment about the absence of rehabilitative features, is without merit. There was no evidence placed before the learned judge to warrant her making a statement other than the one she made in that context. Mr Ricketts' only comment in that regard, when he was urged to "do some thinking and to make a chance [sic] in [his] life", said "I can't think no more, your Honour" (page 206 of the transcript). The learned judge made that statement in light of Mr Ricketts' history with young girls. Her statement, and her view that he is "a sexual deviant" (page 205 of the transcript), cannot be flawed.

[33] Similarly, the complaints about the treatment of the guilty plea cannot succeed for at least two reasons. It must be noted, however, that this case predated the Criminal Justice (Administration) (Amendment) Act, which deals with discounts for guilty pleas. That law did not come into effect until 27 November 2015.

[34] The first reason that Mrs Jackson-Miller's submissions, in this regard, falter, is that a discount for a guilty plea may be refused or reduced in certain circumstances. Reference may be made to the learning in Blackstone's Criminal Practice 1999, at paragraph E1.18:

> "…Occasionally the discount may be refused or reduced for other reasons, such as where the accused has delayed his plea in an attempt to secure a tactical advantage…The leading case in this area is *Costen* (1989) 11 Cr App R (S) 182, where the Court of Appeal confirmed that the discount might be lost in any of the following circumstances:…(ii) cases of 'tactical plea', where the offender delayed his plea until the final moment in a case where he could not hope to put up much of a defence, and (iii) where the offender had been caught red-handed and a plea of guilty was practically certain…."

[35] This court expressed similar sentiments in **R v Collin Gordon**. In addressing a complaint that the sentence in that case was excessive, P Harrison JA, as he then was, commented at page 5, on Mr Gordon's late guilty plea:

> "The rationale in affording to an offender the consideration of discounting the sentence because of a guilty plea on the first opportunity is based on the conduct of the offender. He has thereby frankly admitted his wrong, has not wasted the court's time, thereby saving valuable judicial time and expense, has thrown himself on the mercy of the court and may be seen as expressing some degree of remorse.
>
> In the instant case, there was no guilty plea entered 'on the first opportunity.' [sic] The plea of 'not guilty' was changed to 'guilty' after the close of the prosecution's case. The applicant may then well have viewed the prosecution's proven case as overwhelming. It was not a case of an offender frankly admitting his guilt. He was capitulating to the inevitable. Neither can he be seen, as it were, as saving judicial time or saving expense."

Similar statements were made at paragraph [12] of **Jermaine Barnes v R**.

[36] In this case Mr Ricketts pleaded guilty at the close of the prosecution's case. He already had been sentenced for the offences of carnal abuse. It does appear that his late guilty plea was tactical. The learned judge opined, that "a conviction in respect of this matter, might well have been inevitable" (page 206 of the trancript). The learned judge, therefore, was not obliged, at the time of sentencing, to consider any discount for Mr Ricketts' very late guilty plea.

[37] The second reason that learned counsel's submission should fail is that the learned judge specifically gave Mr Ricketts a benefit for his guilty plea. She ordered his sentences to run concurrently with the ones that he was currently serving and concurrently with each other. She was not obliged to order that the sentences run concurrently with the sentences that he was then serving. This is because they did not

arise from the same circumstances. Section 14 of the Criminal Justice (Administration) Act is authority for ordering that sentences should commence after existing sentences expire. The section states:

> "Whenever sentence shall be passed for any offence on a person already imprisoned under a sentence for another crime, it shall be lawful for the Court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced."

[38] The learned judge's approach is similar to that approved by this court in **Joel Deer v R** [2014] JMCA Crim 33, where the court said, in part, at paragraph [16]:

> "…**Here, in our opinion, the appellant benefitted from his guilty plea by the fact that the sentences were made concurrent and in declining to make the sentences consecutive, the learned judge appears to have had regard to all the factors he outlined in his sentencing remarks**. He gave the appellant due consideration for his guilty plea in only imposing 16 years for robbery with aggravation to be served concurrently with the sentences he was then serving, and we see no reason to disturb that sentence." (Emphasis supplied)

[39] There being some merit in respect of this ground, the reasoning will be reflected in reviewing Mr Ricketts' sentence below.

The sentence is manifestly excessive (supplemental ground iii)

[40] Mr Stewart, who argued this ground on behalf of Mr Ricketts, complained that the sentence imposed for incest in this case, is manifestly excessive. Learned counsel argued that the learned judge failed to approach the sentencing exercise systematically. He contended that although the learned judge was without previously decided local cases, she could have resorted to at least two other approaches in determining the appropriate sentence. The first, it was argued, was to look at sentences for this offence in other jurisdictions. The second, learned counsel submitted, was to look at sentences

for similar sexual offences in this jurisdiction. Had the learned judge done so, the submissions run, the learned judge would not have arrived at the maximum sentence, but would properly have arrived at a sentence of 10 years' imprisonment.

[41] Learned counsel relied, in part, on **Sudesh Baldeo v The State** (unreported), Court of Appeal, Trinidad and Tobago, Cr App No 14 of 2011, judgment delivered 30 October 2013, and on the judgment of Simmons JA (Ag), as she then was, in **Dwayne Brown v R** [2020] JMCA Crim 31.

[42] Ms Larmond submitted that these offences, given Mr Ricketts' previous abuse of his stepdaughter, which resulted in C's birth, constituted the worst of the worst. Accordingly, learned counsel submitted, the learned judge was entitled to impose a sentence of life imprisonment. Ms Larmond, however, submitted that since section 7 of the Act does not stipulate any minimum period before an offender becomes eligible for parole, the learned judge erred in stipulating a minimum period of imprisonment of 15 years' imprisonment before eligibility for parole. Learned counsel submitted that section 6(4) of the Parole Act stipulates that, without any stipulation to the contrary, an offender must serve a minimum of seven years' imprisonment before becoming eligible for parole. The sentence, in this case, she submitted, should therefore be one of imprisonment for life, and that Mr Ricketts should serve seven years before becoming eligible for parole.

[43] This court, in respect of sentencing, operates on the premise that where a sentencing judge has not erred in principle, and the sentence does not appear to be manifestly excessive, an appellate judge will not disturb that sentence (see **R v Alpha Green** (1969) 11 JLR 283). It has already been accepted, from the submissions in respect of supplemental ground i, that the learned judge did err in principle and therefore this court is entitled to consider the sentence afresh. It is entitled to utilise the procedure outlined in **Meisha Clement v R** and summarised in **Daniel Roulston v R**

[2018] JMCA Crim 20, as well as the Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017 ('the Sentencing Guidelines'). McDonald-Bishop JA, at paragraph [17] of the judgment in **Daniel Roulston v R**, said:

> "Based on the governing principles, as elicited from the authorities, the correct approach and methodology that ought properly to have been employed is as follows:
>
> a. identify the sentence range;
> b. identify the appropriate starting point within the range;
> c. consider any relevant aggravating factors;
> d. consider any relevant mitigating features (including personal mitigation);
> e. consider, where appropriate, any reduction for a guilty plea;
> f. decide on the appropriate sentence (giving reasons); and
> g. give credit for time spent in custody, awaiting trial for the offence (where applicable[)]."

These steps will be addressed in that order.

The sentence range

[44] The Sentencing Guidelines , at page A-7, indicate that the range of sentences for this offence is five-25 years. The learned editors of the Sentencing Guidelines justify this wide range by stating that it contemplates the varying factual scenarios in which the offence may be committed. No local cases were cited during submissions, in respect of sentencing for this offence under the Act, in order to demonstrate the range set out in the Sentencing Guidelines. It is, however, noted that the Sentencing Guidelines indicate that, for the offence of rape, the maximum sentence is also life imprisonment, but the usual range is 15-25 years' imprisonment. The sentence for having sexual intercourse with a child under 16 year also attracts a maximum sentence of life imprisonment and has a usual range of 15-20 years.

[45] In **Sudesh Baldeo v The State**, to which Mr Stewart referred, the court of appeal of Trinidad and Tobago, in its reasoning, indicated, at paragraph 35, that the range of sentences for the offence of incest is 15 to 18 years. The maximum sentence in that country for that sentence, as under the Act, is life imprisonment.

[46] The range set out for this offence in the Sentencing Guidelines, although it has a lower level than the range in Trinidad and Tobago, may, nonetheless, be accepted as credible, and may be used for the purposes of this exercise.

The appropriate starting point within the range

[47] The Sentencing Guidelines stipulate that the usual starting point is seven years imprisonment. This would, however, not be an appropriate starting point for Mr Ricketts. The fact that Mr Ricketts knew that C was born out of his sexual abuse of his stepdaughter and the fact that he meted out the same type of physical abuse to C as he did to her mother, is a basis for a higher starting point. Although Mr Ricketts' behaviour is considered egregious and abhorrent, it is possible to imagine worse scenarious. His case is, therefore, not the worst of the worst, as Ms Larmond has submitted. It does not deserve a starting point of life imprisonment. An appropriate starting point would be 12 years.

[48] It is instructive to note that the sentence for having sexual intercourse with a child under 16 year attracts a mandatory minimum sentence of 15 years' imprisonment for a person in authority in respect of the victim in such cases. Section 10(4) of the Act states:

> "Where the person charged with an offence under sub- section (1) is an adult in authority, then, he or she is liable upon conviction in a Circuit Court to imprisonment for life, or such other term as the Court considers appropriate, not being less than fifteen years, and the Court may, where the person so convicted has authority or guardianship over

the child concerned, exercise its like powers as under section 7(7) [divesting the offender of authority over the child]."

The relevant aggravating factors

[49] It is necessary to avoid any double counting of the aggravating factors. The starting point was elevated because of Mr Ricketts' general treatment of young girls in his care. It is possible to list as aggravating factors, the following, as identified by the learned judge:

a. the two previous convictions for carnal abuse;
b. his position of authority over C; and
c. the betrayal of the trust, in that C was not left with him but with his mother, he took C away from his mother's house, and placed her in squalid conditions so as to have access to her.

[50] These factors would add four years to his sentence.

The relevant mitigating features

[51] The analysis under supplemental ground ii demonstrates that there is very little that Mr Ricketts can claim by way of mitigating factors. To be generous, he may be given a reduction of one year for the fact that he was gainfully employed.

Consideration of the guilty plea

[52] It has already been explained that, because of its lateness, and the fact that, to an objective onlooker, it could appear to b e merely tactical, there is little basis for giving Mr Ricketts any reduction of his sentence to reflect the guilty plea. Nonetheless, Mrs Jackson-Miller made a strong submission that the plea, despite its lateness, did save the court some time, in that there was no need for the presentation of a defence, closing submissions, a summation and the deliberation of the jury, with the uncertainty of the verdict. Those submissions are accepted, however, the learned judge was correct

in her approach, not to reduce the sentence imposed, to reflect the guilty plea, but to order that Mr Ricketts should serve the sentences concurrently with those that he was serving. In that way he would still get the benefit of reduced prison time, without there being a risk of shocking the public conscience (section 42H of the Criminal Justice (Administration) Act, as amended in 2015).

The appropriate sentence

[53] Following from that analysis, the sentence that results from that exercise is one of 15 years.

Credit for time spent in custody, awaiting trial for the offence

[54] There is no evidence that Mr Ricketts was in custody on remand for this offence, for any considerable period, prior to his trial.

[55] Based on the above analysis, it is agreed that the learned judge did impose a sentence that was manifestly excessive. It should therefore be set aside.

[56] This ground also succeeds.

Conclusion

[57] The criticisms that learned counsel for Mr Ricketts have levelled at the learned judge's sentencing process have been proved to have some merit. It is noted that the Act was then, relatively new, the learned judge was, figuratively, breaking new ground, with the sentence that she was tasked to impose. She did, however, err in using the maximum sentence as a starting point of the exercise. Consequently, the court was entitled to re-consider the sentence. Based on that reconsideration, Mr Ricketts should be sentenced to serve 15 years' imprisonment at hard labour.

[58] Accordingly, the orders are:

1. The appeal from the sentence of incest is allowed.

2. The sentence imposed by the learned judge for the offence of incest is set aside and a sentence of 15 years' imprisonment at hard labour is substituted therefor.

3. The sentence is to be reckoned as having commenced on 22 June 2015, and is to run concurrently with other sentences imposed on or before 22 June 2015.