THE COURT OF APPEAL

Bill No. 32/2018
Appeal No: 29/2022

Edwards J.
McCarthy J.
Ní Raifeartaigh J.

THE PEOPLE

(AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)

Respondent

V

G.D.

Appellant

JUDGMENT of the Court delivered by Mr. Justice Edwards on the 30th of January 2024.

Introduction

1. Having been unsuccessful in his appeal against conviction (see judgment bearing neutral citation [2023] IECA 301), G.D. (i.e. "the appellant") now appeals against the severity of the sentence imposed on him by the Central Criminal Court on the 24th of January 2022.

2. The appellant was convicted, following a contested trial which concluded on the 21st of December 2021, of three counts (count nos. 1, 2 and 7) of rape contrary to section 4 of the Criminal Law (Rape) (Amendment) Act 1990 (i.e. "the Act of 1990"), one count (count no. 3) of sexual assault contrary to s. 2 of the Act of 1990, and three counts (count nos. 5, 6 and 8) of sexual assault contrary to s. 2 of the Act of 1990 as amended by s. 37 of the Sex Offenders Act 2001. A further count (count no. 4) of sexual assault was preferred against the appellant on Bill No. 32/2018, but he was acquitted of this count. The counts on which the appellant was convicted all concerned incidents of sexual offending perpetrated by him on his younger brother (i.e. "the complainant") during the currency of the period 1998 to 2002. The appellant was aged between 14 and 18 years during this period, and the complainant was aged between approximately 10 and 14 years.

3. Following a sentencing hearing on the 17th of January 2022, the Central Criminal Court passed sentence on the 24th of January 2022, on which occasion custodial sentences of 8 ½ years was imposed in respect of each of the s. 4 rape counts, and sentences of 2 years' imprisonment were imposed in respect of each of the sexual assault counts. All sentences were to run

concurrently from the date of conviction. No part of any of the global sentence of 8 ½ years' imprisonment was suspended, and post release supervision was not ordered by the sentencing court.

4. In his Notice of Appeal dated the 24th of January 2022, the appellant advanced the following two grounds in support of his appeal against severity of sentence:

> "*(a) That the learned trial judge erred in fact and in principle in assessing the offences before the Court as being of such severity that they warranted a headline sentence in the ten to fifteen years range.*
>
> *(b) That the learned trial judge erred in fact and in principle in adequately balancing the aggravating and mitigating factors in the case resulting in a sentence which was disproportionate and excessive in all the circumstances.*"

Factual Background

5. This Court in its judgment dismissing the appellant's appeal against his conviction has already provided some detail in respect of the factual background to this matter (see [2023] IECA 301 para. 5 et seq.). As this judgment may be read in conjunction with our earlier judgment it is unnecessary to rehearse *ad longum* the facts underlying the present appeal as adduced in evidence before the jury. It will suffice to provide a precis of the evidence of Garda Sergeant Paul Crowley (otherwise "Sgt. Crowley") tendered at the sentencing hearing in the court below on the 17th of January 2022 concerning the facts.

6. Sgt. Crowley stated that while the appellant committed the offences at various locations across two counties in Munster, they were primarily committed in the family home of the appellant and the complainant. The offences came to light in late 2015 following a disclosure by the complainant to his father, as a result of which in early 2016 a complaint was made to gardaí. Specialist interviewers became involved, and details were obtained from the complainant regarding his older brother's (i.e. the appellant's) sexual misconduct towards him during the currency of the period 1998 to 2002. The complainant would ultimately go on to give evidence at trial in relation to the appellant's sexual misconduct.

7. This sexual misconduct was said to comprise various incidents of sexual touching, oral rape, and an anal rape. One such incident involved the touching of the complainant's penis inside his clothes and an invitation to touch the appellant's penis, all while sleeping over in a bedroom at a relative's home. Reference was also made to an incident of oral rape which occurred at the family home while the boys' parents were out shopping, which incident culminated in an anal rape subsequent to the complainant having been compelled to masturbate the appellant. A further incident of sexual assault was said to have taken place in the confines of a caravan in the course of a family holiday when the appellant touched the complainant's penis outside his clothes and further compelled the complainant to touch his penis. On another occasion, while the boys were at school, the complainant was told by the appellant to sit on his lap, the complainant's pants pushed down over his hips, and the appellant produced a ruler which he used to measure the complainant's penis. A further incident of sexual assault was described, taking place at the family home while the boys were home without parental supervision. This incident comprised the complainant being told by the appellant to masturbate him and also involved the appellant touching the complainant's penis. This incident ultimately culminated in oral rape.

8. The appellant was interviewed following the complainant's disclosure to gardaí. In the course of these interviews he denied any wrongdoing.

9. It was said that there was a delay in the matter coming on for trial on account of factors outside of everyone's control, most particularly the intervening Covid-19 pandemic. The appellant did not enter a guilty plea.

Victim Impact Statement

10. The complainant tendered a poignant victim impact statement to the sentencing court at the hearing of the 17th of January 2022. We do not intend to reproduce it in full on account of its length, but a precis is now provided for the purposes of this judgment.

11. The complainant spoke of how the delay in disclosing the abuse which he had suffered at his brother's hands was on account of "*shame and confusion*" which he had felt; and he averred that these feelings made him reluctant to confide in others. It was not until he was 28 years of age that he was ready to come forward and disclose the abuse. He stated, "*I refused to keep the secret any longer, having lost 18 years of my life locked away. I decided my life had to move forward*". Having mustered this courage, he made the disclosure to his father and described how "*extremely hard*" this was, and how his family "*were understandably hurt, shocked and saddened*" by what they had been told. Despite assurances of family support, the complainant described how his family life "*deteriorated*" following the making of the complaint, such that he was "*forced out of the family home*" as a result of his parents siding with the appellant. Time passed and the complainant ultimately found stability in his life; and he later found himself in a relationship which provided him with the support that he needed.

12. The complainant addressed the appellant directly in his victim impact statement. He recalled being ignored by family and friends, being disowned by family, and referenced efforts at bullying and intimidation in pursuit of having the charges dropped. The complainant stated: "*I sometimes wish you had killed me rather than abuse and rape me, because no matter what happens here today, I'm the one left with the life sentence for what you did to me, not you*". The complainant described the impact of the trial process on him. He referred to listening to "*lie after lie*" by the appellant and his parents, stating that "*[e]ach one hurtful* (sic) *felt like a stab to the heart*". He said that he survived this ordeal on account of the support of his boyfriend.

13. The complainant stated that the consequences of the appellant's actions were such that he had lost "*everything*": his home, his friends and family, his chance at an education and then a career. The complainant told the sentencing court that he is suffering from depression, PTSD, insomnia, feelings of isolation, loneliness, and suicidal tendencies, as a consequence of the appellant's misconduct; and he further said that he is "*plagued with nightmares*".

14. The complainant resolutely concluded:

> "*Today I'm in the Criminal Courts of Justice, not for me the adult you see before you, but the 10-year-old boy that forever occupies by being* (sic)*. From the age of 10-years-old I was repeatedly and systematically sexually abused and raped by my brother* [the appellant] *until I was the age of 14. I somehow managed to keep this secret for 18 years, perhaps through fear of him or just mainly just the shame and embarrassment it could happen to me* (sic)*, or just maybe in fear that I would not be believed. When all this is finally over there is no happy ending for me, no matter what happens, I still lost*

everything; my family, my friends, there is no closure. My life doesn't revert back to normal; this will change nothing for me. I am still the one liked by none and hated by many for telling my truth. I tell you this not for sympathy but to let you know that I am a fighter and I will do whatever it takes to have my story heard. Twenty-three years of my life have been stolen; it is no longer justice I seek its (sic) *vindication.*"

Personal Circumstances of the Appellant

15. As stated previously, the appellant was aged between 14 and 18 years at the time of offending. He was just shy of turning 38 years old at the time of sentencing. He had no previous convictions, and he was not a person who had come to adverse Garda attention subsequent to the making of the complaint. In the course of his two interviews with gardaí, the appellant had maintained his innocence and denied the allegations which were put to him. It was said that he was fully co-operative with gardaí in terms of their dealings with him, and that he had not caused any issue while in Garda custody.

16. On the morning of the sentencing hearing, Sgt. Crowley was informed of certain instructions the appellant's legal team had received in relation to allegations the appellant had purportedly made regarding sexual abuse he complained he had suffered when he was aged 13 and 14 years, and that these matters had been notified to gardaí. However, Sgt. Crowley in cross-examination averred that having checked the Garda PULSE system, he could not find any record of such a complaint having been made, and that this occasion (i.e., its revelation on the date of the sentencing hearing) marked the first time he had heard of such allegations. No further detail regarding these allegations was forthcoming at the sentencing hearing.

17. A letter from a Dr S.T., consultant psychiatrist, was tendered to the sentencing court. Therein Dr S.T. wrote that the appellant had been a client of a community mental health team at a mental health centre in Munster since 2019, and that he had previously attended at two other mental health centres during the currency of periods February 2018 to February 2019 and April 2011 to July 2012, respectively. Dr S.T. stated in her letter that the appellant has a diagnosis of Emotionally Unstable Personality Disorder, and that his attendance at mental health services was for the purpose of managing stress and anxiety associated with his diagnosis and his psychosocial stressors. The appellant was on prescribed medication to treat his diagnosis at the time of sentencing. The appellant had advised his counsel that he had previously been diagnosed with schizophrenia, however this was not referred to in Dr S.T.'s letter.

18. Reference was made in the course of the plea in mitigation to the appellant's education. It was submitted that, despite having left school, the appellant later returned to education and went on to obtain a degree in primary teaching and subsequently a masters in literature. The appellant since commenced a successful career in teaching. Counsel for the defence submitted that this career would never be available to the appellant again, and he described this as "*the most significant*" of what he described as "*the extra-judicial penalties and sanctions*" that the appellant would suffer, irrespective of what sentence was imposed. It was said that this fact, combined with his mental health difficulties and loss of family support, would contribute to incarceration being a particularly difficult experience for the appellant.

19. Regarding the appellant's family circumstances, his counsel submitted that notwithstanding the division in the appellant's family, the appellant came from a very close-knit

and supportive family. It was argued that incarceration, and the appellant's resulting physical separation from his family, would result in the appellant losing the benefit he derived from his family's support, and that the impact of this deprivation on the appellant would be particularly pronounced in the light of his own personal issues. It was explained that the appellant is particularly close to a younger sibling, who has a neurological condition, in respect of whom the appellant was particularly mindful and caring. Counsel urged upon the sentencing court that the appellant was concerned for this sibling's welfare, and the impact which his parents' aging would have on the sibling's care. It was suggested that worry on account of this circumstance would further contribute to the "*acute*" suffering the appellant would experience as a result of incarceration physically separating him from his family.

20. A letter written by family friends was tendered before the sentencing court and has been made available to this Court. On account of its length, we do not intend to reproduce it full. In essence, the letter speaks to the good character of the appellant other than in the context of this offending; it refers to assistance which the appellant had rendered when one of the authors of the letter had taken ill; how he was particularly good with one of the authors' children who has a developmental difficulty; and how the appellant had assisted the authors' family in various other regards through the years.

Sentencing Judge's Ruling

21. The sentencing judge acknowledged the factual background as it related to the counts on which the appellant had been convicted. She identified as aggravating factors the following circumstances: the impact on the victim (which the sentencing judge regarded as "*the most significant aggravating factor*"); the duration of the offending over a period of four years; the age disparity between the parties; that the court below was concerned with offending which escalated from sexual assault to penetration of the complainant's mouth and anus; the breach of trust by an older brother who should have protected his younger brother, and the fact that much of the offending occurred at the victim's home, "*a place where he should have felt secure*".

22. The sentencing judge would later return in her ruling to a discussion of the impact on the victim, and she acknowledged that "*the offending has had a devasting impact*" on the complainant "*who continues to suffer*"; and she referred to the loss of family support which the complainant experienced and the psychological impact on the complainant of the appellant's offending. The "*shame and confusion*" the complainant felt as a child was further acknowledged, as was his fear or reluctance to disclose the abuse for many years.

23. In her ruling, the sentencing judge also observed that the appellant had "*vociferously*" denied the charges against him, and that he continued to maintain his innocence. It was said that the appellant had shown no remorse and had not apologised to the complainant. The sentencing judge referred to particular suggestions made by the appellant at trial (which are dealt with at greater length in the judgment dismissing the appeal against conviction [2023] IECA 301, para. 9) to the effect that the complainant was motivated to make his complaint in part because he was "*jealous*" of the appellant's achievements, but largely due to the complainant harbouring a desire for revenge arising out of the appellant's disclosure of the complainant's sexuality to their parents. It was further posited by the appellant that the complainant was taking "*too great*" an interest in

the parents' estate in the event of their demise. Thus, the thrust of the appellant's suggestions was that the complainant was "*lying*".

24. With respect to age disparity as an aggravating factor, the sentencing judge had regard to *People (DPP) v. J.M.* [2020] IECA 285, in particular para. 23 thereof, wherein Ní Raifeartaigh J. held:

> "*23.* [...] *Fifthly, while the age differential is undoubtedly not the same as in the case of an adult such as a parent or uncle, a period of 4 years between two brothers is not insignificant either, particularly when they are young. There is a big difference between a 10- and a 14-year old; and between a 14- and an 18-year old. Inevitably the younger child looks up and admires the older child; inevitably there is a power differential; inevitably there is something destroyed by the abuse that is absent from a "stranger" abuse case. Whether one calls it a breach of trust or not – the Court is of the view that the phrase does apply – the point is that there is an exploitation of a power differential within a family dynamic, which in the Court's view (together with the serious and prolonged nature of the abuse) places it within the 10-15 year category identified in F.E.*"

25. The sentencing judge had express regard to Charleton J.'s guideline judgment in *People (DPP) v. F.E.* [2019] IESC 85, wherein the learned Supreme Court judge suggested a scale for sentencing in rape cases, and she noted that the prosecution had submitted that the appellant's offending fell in the "*more serious cases*" category attracting a headline sentence of between 10 to 15 years' imprisonment. In circumstances where the appellant's took place when he was a juvenile (aged between 14 and 18 years), the sentencing judge had regard to this Court's decision in *People (DPP) v. T.D.* [2021] IECA 289 wherein Edwards J., delivering the judgment of the Court, stated at para. 31:

> "[...] *We feel that the fact of minority represents a very significant circumstance, that will in many cases* [...] *operate to in fact reduce culpability somewhat. That is not to gainsay that rape is always a very serious offence, and one which must be punished as such. However, the Constitution requires that such punishment must not only be proportionate to the gravity of the offending conduct but also to the circumstances of the offender*".

26. The sentencing judge noted the mitigatory factors at play. At the outset of this limb of her analysis, the sentencing judge stated that the most significant form of mitigation, i.e. a plea of guilty, was not available to the appellant in mitigation; and that while the appellant was entitled to contest the trial, he did so at the cost of losing "*the most important and relevant form of mitigation*". The sentencing judge acknowledged that the appellant had "*an impressive history of academic achievement*" and she referred to his career in teaching, remarking that the appellant "*appears to have been a hard-working and successful individual*". She further recognised that the appellant had no previous convictions and had never come to any adverse attention. The sentencing judge further acknowledged receipt of the letter from Dr S.T., consultant psychiatrist, (described earlier at para. 17), and the judge noted the appellant's history of mental health difficulties.

27. The delay, i.e. the delay from the time of offending to the disclosing of the complaint to gardaí (a delay spanning some 14 years from the date of the most recent offence), was also acknowledged by the sentencing judge as a factor in this case; however, the sentencing judge

went on to remark that delay "*is not unusual in cases where a child has been subjected to offences of this nature*".

28. Having regard to the foregoing, the sentencing judge imposed the following sentences:

(i) In respect of the s. 4 rape counts, the sentencing judge held that she would have considered a headline sentence of 13 years' imprisonment on each of count nos. 1, 2 and 7. Adjusting this for mitigation, and accounting for the appellant's juvenility at the time of the offending, the sentencing judge imposed 8 ½ years' imprisonment on each of the s. 4 rape counts.

(ii) In respect of the sexual assault counts, the sentencing judge held that she would have nominated a headline sentence of 3 years' imprisonment on each of count nos. 3, 5, 6, and 8. Adjusting this to account for the appellant being a juvenile at the time of offending, she imposed 2 years' imprisonment on each of those counts.

(iii) All such sentences were to run concurrently, backdated to the date of conviction.

(iv) The sentencing judge did not order post-release supervision both on account of the antiquity of the offending and as the appellant had not come to adverse attention in the intervening period since he had last offended.

29. Having passed sentence on the appellant, the sentencing judge made the following remarks:

> "JUDGE: *I have considered at great length the fact that he was a juvenile at the time, but I have to mark the seriousness of the offending and the ongoing and painful impact, and the impact that the victim continues to suffer as a result of the offending on the part of his older brother.*
>
> [...]
>
> *And I want to make it clear that had he not been a juvenile at the time, I would have imposed a more substantial sentence*".

Submissions to the Court of Appeal

Submissions on behalf of the appellant

30. Counsel on behalf of the appellant, in written submissions filed on the appellant's behalf, submitted that the two grounds of appeal advanced in the Notice of Appeal were capable of being dealt with simultaneously.

31. It was argued that the sentencing judge erred in assessing the appellant's offending as falling into the "*more serious*" band of offending on the *F.E.* scale. Counsel referred to the dicta of Charleton J. at para. 57 in *F.E.* wherein the learned Supreme Court judge observed that what characterises cases which fall under this band of offending "*is a more than usual level of degradation of the victim or the use of violence or intimidation beyond that associated with the offence, or the abuse of trust*". Counsel contended that the facts of the present case did not meet this threshold; and that while the offending at issue involved degradation and a breach of trust between siblings in a case involving familial abuse, such degradation did not go beyond that associated with the offences themselves. Accordingly, it was said that the facts of the case did not support the sentencing judge's finding that the appellant's offending fell in the "*more serious*" band of the *F.E.* scale.

32. Counsel was also critical of the sentencing judge's approach to the issue of the appellant's minority at the time of offending. It was submitted that the sentencing judge did not take the appellant's age at the time of offending into account in relation to the question of culpability and the setting of a headline sentence. It was said that the sentencing judge erred in attaching disproportionate weight to the aggravating factors as identified in the court below; and further that insufficient credit was afforded to the appellant for mitigation, particularly in respect of the appellant's age at the time of the offending and the lapse of some twenty years between the last offence and the date of sentence. The reduction afforded from 13 years to 8 ½ years was criticised by counsel as "*an inadequate appreciation of the mitigating factors*" just described. In this regard, counsel relied upon the dicta of Edwards J. in *T.D.* at para. 31 (cited previously at para. 25, above) and he submitted that the reduced headline sentence ought to have reflected an assessment of culpability which factored in the appellant's age at the time of offending.

33. Reference was made by counsel to a comparator decision in *People (DPP) v. Paul Barry* [2017] IECA 171, involving similar circumstances, wherein this Court identified no error on the part of the sentencing judge who had imposed a custodial sentence of 5 years, the final 3 ½ years thereof suspended. It should be stated, and it is conceded by counsel, that a noticeable feature of *Barry* distinguishing it from the present case is that in *Barry* the appellant was able to avail of a guilty plea in mitigation.

34. Counsel for the appellant has also referred the Court to a document entitled "*Rape Sentencing Analysis: WD and Beyond*", an academic survey of sentencing in rape cases. We were referred to this document because it references, *inter alia*, newspaper reports (from 2016, and from 2019, respectively) of two cases involving accused persons being sentenced in adulthood for sexual offences committed when they were minors. However, in circumstances where the source material of immediate interest is newspaper reportage involving only brief accounts of the cases in question (and no court judgment or transcript of *ex tempore* sentencing remarks is available in respect of the two cases in question), we do not think it is appropriate to take account of it in this particular instance.

35. Counsel further submitted that inherent in the sentencing judge's error in failing to give sufficient weight to the appellant's age at the time of offending is the failure to take proper account of the delay in the case in terms of the making of the complaint. While it is accepted that the sentencing judge did refer to the delay in her ruling, in support of their criticism of the sentencing judge's approach counsel drew this Court's attention to commentary by Prof. Tom O'Malley S.C. in his treatise *Sexual Offences* (2nd edn, Round Hall 2013). In particular, reliance is placed by counsel on para. 23-53 thereof:

> "*Having regard to the various common-law authorities on the matter, the following basic principles may be said to apply in Ireland when sentencing sexual offences committed a considerable time in the past.* [...] *(4) In accordance with those principles, and the fundamental principle of proportionality in particular, careful attention should be paid to the offender's culpability, bearing in mind his age, maturity and other circumstances, when the offence was committed. (5) Given that rehabilitation remains a relevant sentencing factor, regard should be had to the offender's behaviour since the cessation of the offending of which he has been convicted. Desistance from further offending may provide*

evidence of self-rehabilitation and, consequently, of a reduced risk of recidivism [...] *(6) Evidence of social integration, as manifested by factors such as employment, assumption and discharge of family responsibilities and contributions to the community, may also point to reduced risk* [...]".

Submissions on behalf of the Director

36. Counsel on behalf of the Director accepts that the fact of an accused being a minor at the time of offending operates to reduce culpability, and in turn reduces the appropriate headline sentence. It is further conceded by the Director that, absent any specificity on dates, the appellant was entitled to be sentenced as someone who committed offences as a juvenile. However, counsel for the Director observes that in respect of count nos. 1 and 2 (which counts comprise two s. 4 rapes committed during the currency of the period 1st of January 2002 to the 31st of December 2002), the appellant would have attained his majority in the early part of the period specified in the particulars of those counts as set out on the indictment, such that he would have been approximately 17 years and 11 months old at the outset of this period.

37. The Director rejects the contention advanced on behalf of the appellant that the headline sentences nominated at first instance were excessive. It was submitted that these headline sentences took account of the impact of the offending on the complainant, and in this regard, reference was made by counsel to the dicta of Charleton J. in *F.E.* at para. 53:

"[...] *In the course of things, mitigation factors will vary from case to case but great care should be exercised so that the original fault is not overlooked as would be the harm to the victim. Instead, that harm should be appropriately marked.* [...]"

38. It was submitted on behalf of the Director that the sentencing judge took account of all the pertinent factors, including the appellant's minority, but also including the impact of his offending on the complainant. It was said that the overall sentence imposed at first instance meets the seriousness of the appellant's offending behaviour, and further that it takes account of accepted sentencing principles including the appellant's minority and other relevant personal circumstances.

39. The Director does not accept the appellant's argument that the sentencing judge's alleged failure to give sufficient credit for mitigating factors resulted in the imposition of a sentence which was disproportionate and excessive in the circumstances. It was said that the present case was one which was always going to result in a significant sentence. Counsel point to the decision on the part of the sentencing judge to adjourn the matter following the sentencing hearing as indicative of a careful approach by her towards the material which she had to consider in arriving at her ruling.

40. Counsel is critical of the appellant's reliance on *Barry* as a useful comparator. He submitted that it is of limited assistance both because it involved a guilty plea, and because it involved an accused who was relatively younger than the herein appellant at the time at which he committed the offences the subject matter of that case.

41. Counsel noted that this Court (Birmingham J., as he then was) has observed in *People (DPP) v. R.A. (No. 2)* [2016] IECA 110 at para. 5 that "*[t]he court's role is to engage in a review of sentences and it intervenes only when an error in principle has been identified. Only when the sentence falls outside the range available will a sentence be altered*". Counsel for the Director submitted that the approach taken by the sentencing judge in the present case was permissible,

and that the sentences imposed by her on the appellant were within the range of sentences available for the offences which he had committed.

The Court's Analysis and Decision

42. While we agree with the submission on behalf of the appellant that any individual instance of the offending conduct of which he was convicted would not have exhibited a more than usual level of degradation of the victim (i.e., above that inherent in the offence as statutorily defined), and that moreover there was not a more than usual use of violence or intimidation in the commission of the offences, we consider that there were nonetheless sound reasons for locating the gravity of the appellant's offending in the range that would attract a headline sentence of between 10 and 15 years' imprisonment in the case of an adult. In our assessment, placing it in that range was justified by the multiplicity of aggravating factors. This was not one-off offending. Rather it was persistent and repeat offending over a considerable period of time, escalating all the while in seriousness, and culminating in both oral and anal rape at a point when the appellant was on the threshold of attaining his majority. The victim was vulnerable. The age differential between offender and victim was exploited as was the fraternal relationship between them. That gave rise to a significant breach of trust component. Further, very significant trauma was caused to the victim which persists to this day. We therefore find no error on the part of the sentencing judge in her selection of the 10 to 15 years range as being the appropriate one within which to locate the gravity of the appellant's offending conduct had he been an adult at the time of his offending.

43. Of course, the subrange of 10 to 15 years is still quite wide, and a secondary complaint is based on the sentencing judge's nomination of 13 years as being the headline sentence that would have been appropriate if the appellant had been an adult at the time of his offending. It was suggested that even if the 10 to 15 years range had been correct, the headline sentence in this case at most merited being located towards the lower end of that range.

44. We have carefully considered this argument and we are not persuaded that the sentencing judge was in error in starting at 13 years. Every sentencing judge has to have a margin of appreciation. While it would have been open to her to perhaps have started slightly lower, we do not consider that she exceeded her margin of appreciation in nominating 13 years as being the appropriate starting point.

45. The appellant was entitled to a significant discount from the nominated headline sentence of 13 years on account of the fact that the offences were committed while he was still a minor. There is no hard and fast rule as to the amount of discount which should be afforded for this factor, but it will invariably be a substantial discount. The exact level of the discount will depend on the circumstances of the individual case. The younger and more immature the offender was the greater the discount should be. In this particular case the offender was aged between 14 and 18 years when he committed his crimes. However, the worst of his crimes were committed when he was on the threshold of attaining his majority. Accordingly, while he was still entitled to a substantial discount from the sentence which would have been applicable in the case of an adult offender, it would not be as great in his case as it might be in the case of an offender who was significantly younger than him.

46. The biggest difficulty faced by the appellant was the fact that he did not have available to him the additional very substantial discount that would have been available to him had he pleaded

guilty. Moreover, while he was a first-time offender, he would not have been entitled to much mitigation on account of having a previous good character in circumstances where this was not once-off offending but rather persistent offending over a period of years. That having been said, there were some other mitigating circumstances in the case. He has not further offended since attaining his majority, and he appears to have led a prosocial life. He also has some mental health issues which represent an adversity in his life that could potentially make a prison sentence more difficult for him to cope with.

47. The sentencing judge in this case discounted by approximately 35% from the headline sentence of 13 years which she considered would have been appropriate in the case of an adult offender, and, having done so, she imposed a custodial sentence of 8 ½ years on the appellant. Once again, while it might have been within her discretion to have been slightly more generous (although her scope in that regard was really quite limited), we do not consider that she was in error in applying an overall cumulative discount of 35%. We reiterate once more that a sentencing judge must be afforded a margin of appreciation. We do not consider that she exceeded her margin of appreciation, and we find no error of principle in her approach to discounting for mitigation.

Conclusion

48. In circumstances where we have found no error in the approach of the sentencing judge, the appeal against severity of sentence must be dismissed.