APPEAL COURT, HIGH COURT OF JUSTICIARY

[2024] HCJAC 31
HCA/2024/000082/XC

Lord Justice Clerk
Lord Matthews
Lady Wise

OPINION OF THE COURT

delivered by LADY DORRIAN, the LORD JUSTICE CLERK

in

CROWN APPEAL AGAINST SENTENCE

by

HIS MAJESTY'S ADVOCATE

Appellant

against

AP

Respondent

Appellant: The Lord Advocate (Bain KC); the Crown Agent
Respondent: Kerrigan KC; Paterson Bell, Solicitors Edinburgh for John Kilcoyne, Solicitors, Glasgow

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31 July 2024

Introduction

[1] This is a Crown appeal alleging that a sentence of 5 years' imprisonment for one charge of sexual assault and two charges of rape was unduly lenient.

Background

[2] The respondent was convicted on three charges in the following terms:

> "(004) on 10 April 2021…you…did sexually assault [H], your ex- partner…in that you did utter sexual remarks to her, expose your erect penis to her, repeatedly attempt to kiss her and push your body against hers: CONTRARY to Section 3 of the Sexual Offences (Scotland) Act 2009;
>
> (010) on 10 April 2021 … you … did assault [T], your ex-partner … and did seize her on the body and penetrate her vagina with your penis and you did thus rape her to her injury: CONTRARY to Section 1 of the Sexual Offences (Scotland) Act 2009;
>
> (011) on 9 February 2020 … you … did, whilst she was asleep and unable to give or withhold consent, assault [B], your partner … and did touch her vagina, and thereafter when she awoke, having with her consent engaged in kissing, penile vaginal and anal intercourse, did further assault her and did seize her on the body, restrain her, penetrate her anus with your penis and you did thus rape her, to her injury: CONTRARY to Section 1 of the Sexual Offences (Scotland) Act 2009."

[3] Each of these charges was aggravated in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, and charges 4 and 10 were subject to a bail aggravation. The respondent relied on a special defence of consent in respect of charges 10 and 11. The respondent had originally been indicted on 14 charges, only 5 of which went before the jury. The jury returned verdicts of not proven on charges 2 and 3 (sexual assault and rape of H). The remaining charges were withdrawn by the Crown at various stages of the trial and the respondent was duly acquitted thereof. These charges had included in respect of T and H charges of a course of abusive conduct towards them, in the case of H for a very extended period (7 ½ years) and for 2 years regarding T. The indictment had also contained a docket reflecting a course of abusive conduct towards B which reflected a prior conviction under section 1 of DASA. All of these were withdrawn from the consideration of the jury at the conclusion of the crown case.

[4] In due course, and having considered the terms of the criminal justice social work report, the sentencing judge sentenced the respondent *in cumulo* to a period of 5 years'

imprisonment backdated to 13 December 2023. He also imposed a 10 year non-harassment order in respect of each of the complainers in terms of section 234AZA of the 1995 Act, and ordered that the respondent be made subject to the notification requirements under Part 2 of the Sexual Offences Act 2003 for an indefinite period.

Circumstances

[5] The circumstances of the individual charges were as follows:

Charge 4

[6] H gave evidence that she was in a relationship with the respondent since 2011. They had a daughter together. They broke up briefly in 2016 but reconciled and ended their relationship in 2018. The respondent contacted the complainer on 10 April 2021. He asked to come round to her house for sex. She declined, but invited him round to spend time with their daughter. H went for a bath whilst he was there watching a film with their daughter. At some point he came upstairs to the bathroom and knocked on the door. Expecting her daughter, she opened it. The respondent stood there with his erect penis exposed. He came into the bathroom. He asked her for sex and tried to kiss her. She refused. He persisted – H described this as having tried "a bit more forcefully" meaning he had his hands on her trying to pull her towards him – and she had to push him away. She told him to go back downstairs with their daughter, but he left the property. This offence occurred on the same day as that in charge 10, which was committed earlier that day.

Charge 10

[7] The events in charge 10 occurred earlier in the morning of 10 April 2021. T met the respondent in December 2018 and their relationship continued "on and off" until March 2021. On the evening of 9 April, T sent a blank e mail message to the respondent. She said

this was an accident, whereas the respondent took this as a signal that T wanted him to contact her. Communications ensued and T invited the respondent, who was out drinking, to her house. The respondent was at a friend's house. He was meant to arrive at between 23:30 and 00:00. Over a number of hours into the early hours of the morning the parties continued to communicate. T said she would wait up for the respondent and left the door unlocked.

[8] The respondent eventually arrived at around 09:30. He entered the property through the unlocked door and went straight to the bedroom. T was in her pyjamas and ready to go to sleep. She described the respondent as being "absolutely wrecked". He took his clothes off until completely naked and tried to kiss T. She initially refused, but eventually kissed him, she said, to "shut him up". He pleaded with her to take her top and bottoms off and eventually she did so. Whilst T had her back turned to the respondent he tried to get her to feel his penis. She said no repeatedly. However she eventually ended up masturbating him and then performing consensual oral sex on him for a couple of minutes. Before she did this they "pinkie-promised" that the respondent would not try to have sex with her.

[9] The respondent then turned her onto her back. She said that she did not want to have sex with him. She told him to get off her and put her knees up to stop him from getting too close. He leant on her knees and pulled her underwear to the side. She said "no, no, no, I told you no I don't want tae". He pushed the tip of his penis inside her vagina. She told him to get off her and continued to tell him no. She tried to push him off with her knees as she could not move her hands. When she managed to release her hands she could not reach his penis. She continued to say no and then the respondent pushed further and his penis entered her vagina.

[10] Following the incident T began to have a panic attack. She went to the toilet and noticed bleeding from her vagina. She was physically sick. She told the respondent to leave and not to contact her again. She telephoned her sister in a highly distressed state and thereafter called the police. The complainer suffered an abrasion on her thigh as a result of the incident.

Charge 11

[11] B and the respondent were in a relationship between October 2019 and the end of February 2020. That relationship was continuing at the time of the incident, which occurred in the early hours of 9 February 2020. B gave evidence that in the weeks leading up to it the respondent had been going on about having anal sex. He pestered her for it. If she loved him she would let him do it. B went to bed alone at around 22:30 on 8 February. She fell asleep and awoke to the respondent touching her vagina over her underwear. They started kissing and having consensual sex. During the consensual sex the respondent asked her if they could try anal sex. Her evidence was that she "gave in" and agreed. They agreed that he would stop if it hurt. She turned over and removed her pants. There was some uncertainty about whether the respondent first inserted his finger, which B said was really painful and really uncomfortable. He said it would be fine and then inserted his penis.

[12] The complainer said "ow, ow, ow it's really hurting you need to stop". He did not stop and pushed in further. She tried to push him off to get him to stop. She slapped him on his leg repeatedly, told him it was sore and repeatedly said that he should stop. The respondent carried on. She was trying to pull away but he had a grip of her hips. He stopped thrusting but his penis was still inside her anus. Then his hands slackened on her hips and she moved forward.

[13] She lay down on her belly, shaking and felt very sick. She went to the toilet and there was blood dropping into the toilet bowl. She bled from her anus for a number of days thereafter. She went back and lay in the bed, facing the respondent in order to cover her anus from him. The respondent was "in a huff" because she had made him stop and he had not ejaculated inside of her. A few days later a friend came to visit, and the complainer, in a distressed stage, told her what had happened. She was unable to move her bowels for five days.

The CJSWR

[14] The respondent continued to deny any wrongdoing in the CJSWR. The author reports that he claimed that the complainers had collaborated against him and that the accusations were malicious in nature. The CJSWR notes the respondent's various adverse childhood experiences and traumatic events witnessed by the respondent at a young age, including the death of two close relatives.

As to his mental health the report recorded that the respondent

> "reported that he is diagnosed with Emotionally Unstable Personality Disorder. Mr P says he is in receipt of medication via the South Mental Health Team. He indicated that over the years he has learned that routine and structured use of time, including employment helps keep his mood regulated. He was aware that he can demonstrate some obsessional traits, including the need for everything to be ordered and tidy but reported that this helps him feel settled. As noted earlier Mr P has experienced significant trauma related to witnessing the deaths of his grandmother, half brother, and road accident victims. He attributes his Personality Disorder to these experiences."

[15] Various risk factors were identified, and the respondent was assessed as medium risk of further sexual offending and medium risk of violent offending. His previous conviction for the domestic abuse of B in 2021 was noted. The author made no reference to the possibility of an extended sentence and noted that "[n]eeds in relation to future risk will be identified during his sentence and these reflected in future licence conditions". There

was a pattern of offending across three different relationships. His denial of the offences suggested that he would not engage in any intervention designed to reduce the risk of reoffending.

The Judge's report

Sentencing judge's report

[16] Addressing the circumstances the judge describes the Crown's analysis of the offending as involving a significant course of conduct against former partners and an escalating pattern of severity as a "gross overstatement of the position". He reports that charge 4 libelled "a relatively minor incident" committed in the context of an on/off relationship for many years which had borne a daughter, and which incident lasted no more than a few seconds. Had this been a standalone charge he would have been minded to impose a community based disposal. In terms of charges 10 and 11 the libel did not provide a true picture of what actually happened. Charge 10, which involved the complainer inviting the responded to her home late at night and where the whole process was very short, was "somewhat less serious" when considered against that background. In charge 11 the complainer withdrew consent during consensual anal intercourse. The offences were serious but the circumstances surrounding the commission made the offences considerably less serious than they might otherwise have been.

[17] The sentencing judge took into account that the respondent's actions indicated an intention to cause harm, otherwise there could have been no offence. He also took into account the previous conviction in relation to B which was before him; and the injuries sustained by the complainers, which were not serious and did not require medical attention.

[18] The VIS were not placed before him. They were submitted at a late stage by email but not referred to in court, as they should have been, However, the relevant information

contained therein, (much of it relating to withdrawn charges) had been spoken to in the evidence. He disputed that the respondent's continued denial was relevant to sentencing.

[19] The submission that there were no mitigating factors was incorrect. The respondent suffered from Emotional Unstable Personality Disorder and it was clear that this stemmed from the traumatic experiences he suffered as a child. The judge notes: "I saw and heard him giving evidence. He was a badly affected young man who definitely struggled with life as a whole." In his report he expresses the view that the respondent was "mentally ill". The CJSWR did not recommend an extended sentence therefore he could not have imposed one without a further report. In any event an extended sentence was not merited.

The appeal

Note of Appeal

[20] The grounds of appeal eventually insisted upon maintained that the trial judge had not given appropriate weight to various relevant factors which indicted the severity of the offences, their context, the harm caused, the significance of the statutory aggravation and the absence of mitigating factors. The judge had not correctly followed the procedure for determining the length of a *cumulo* sentence.

S***ubmissions for the Crown***

[21] As the submissions developed, the primary contention was that, while a *cumulo* sentence was appropriate, the sentence imposed was unduly lenient. The trial judge had erred in respect of the following issues:

(i) the significance of the statutory aggravations;

(ii) the correct approach to the imposition of a *cumulo* sentence for multiple offences;

(iii) the assessment of the overall seriousness of the offending;

(iv) the absence of mitigating factors; and

(v) the assessment of risk, and criteria for the imposition of an extended sentence;

(i) the significance of the statutory aggravations

[22] All three charges were aggravated under section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. Reference was made to *Rizzo* v *HM Advocate* 2020 SCCR 397, para 19 and *McGowan* v *HM Advocate* 2024 HCJAC 20, paras 15-17. The sentencing judge appeared to have fallen into a similar error as had been described by the court in *McGowan*: he treated the fact that the offence was committed in a domestic context as a mitigating rather than aggravating factor. The judge made no statement in terms of the 2016 Act and his report suggested that he was not aware of its implications. What he ought to have done was to select a sentence for the offence had it occurred in a non-domestic context and thereafter increased it to take account of the aggravation (*McGowan*, paras 15-16). Charge 10 had also been subject to a bail aggravation.

(ii) the assessment of the overall seriousness of the offending;

[23] The Lord Advocate drew a comparison between the sentencing judge's narration of the circumstances of the offences in his report and the transcripts of evidence of each of the complainers. The tone and content of his report appeared to diminish the seriousness of each offence and reflected the view that because the offences were committed in a domestic context they were less serious. It was accepted that the offences could not be seen to fall within a pattern of abuse, and that elements of the VIS fell to be disregarded. Charge 4, although of lesser seriousness, was not "a minor offence"; it indicated a complete disregard for H's personal autonomy. On its own it would have merited a custodial penalty. It could be assumed that the rape in charge 10 had a significant emotional impact on T (*HM Advocate* v *GH* 2024 SLT 37, para 19), which was in any event vouched in the VIS and should have

been taken into account).The circumstances of charge 11 demonstrated no regard for B's sexual autonomy. The offence came at the end of a period of abuse reflected in the previous conviction for domestically abusing B. There had been a lasting physical and psychological impact. The offences were further aggravated by the respondent's continued denial of the offences in the sense that he lacked remorse, insight and victim empathy (*HM Advocate v CB* 2023 JC 59, para 37).

(iii) the absence of mitigating factors;

[24] Whilst the CJSWR described several adverse childhood experiences, the respondent's mental health issues were self-reported. Too much weight had been placed on this in the absence of suitable medical evidence. The trial judge misdirected himself in concluding that the respondent was mentally ill. Otherwise there were no mitigating factors.

(iv) the assessment of risk, and criteria for the imposition of an extended sentence.

[25] Several features were identified in the CJSWR which suggested that the respondent was likely to reoffend, particularly in the domestic context. Although the author did not consider management of future risk in depth, the trial judge was not precluded from imposing an extended sentence (*Steele & Spence* v *HM Advocate* [2024] HCJAC 11, para 31). The sentence was not sufficient to manage the risk posed by him upon release (*DS* v *HM Advocate* 2017 SCCR 129). In the course of submissions reference was made to Guidelines issued by the Sentencing Council for England and Wales and to *HM Advocate* v *LB* 2023 JC.

(v) the correct approach to the imposition of a cumulo sentence for multiple offences;

[26] It was not disputed that a *cumulo* sentence was appropriate. However where a *cumulo* sentence for multiple offences is to be imposed, the court requires to follow the approach explained in *HM Advocate* v *Fergusson* [2024] HCJAC 22, paras 22, 25 and 30 (see

also *HM Advocate* v *RM* [2023] HCJAC 43, paras 40, 46 and 47). It is necessary to state the reasons as clearly and openly as circumstances permit, explain what sentence would have been selected had the offence, or group of offences, stood alone and why a *cumulo* sentence of a lesser amount than the sum of the various sentences was appropriate.

Submissions for the respondent

[27] The circumstances in the present case were markedly different from those in *HM Advocate* v *LB,* which involved a pattern of abusive and controlling behaviour over 4 years and encompassed physical and sexual violence. Nor was there an escalating pattern of severity as in *HM Advocate* v *RM*.

[28] The custodial penalty of 5 years' imprisonment was not unduly lenient. In terms of the Principles and Purposes of Sentencing Guideline, the core principle was that sentences must be fair and proportionate. There were three requirements. First, all relevant factors must be considered, including the seriousness of the offence, the impact on the victim and others and the circumstances of the offender. The judge had considered these. Second, the sentence should be no more severe than necessary to achieve the appropriate purposes. The judge had considered the aggravations and *ex proprio motu* imposed 10 year non-harassment orders as a result. Third, reasons for sentencing decisions must be stated as clearly and openly as circumstances permit. The judge reasonably stated his reasons. Guidelines from England and Wales provided no meaningful assistance. The court should give appropriate weight to the sentencing judge's views given he had the advantage of seeing and hearing all the evidence. The sentence was not unduly lenient and an extended sentence was not appropriate.

Analysis

[29] We are persuaded that the trial judge minimised the nature and seriousness of the offences, having regard to the terms of his report, the transcripts of the evidence, and the overall sentence imposed.

[30] It may be too far to say, as the Crown asserted, that the trial judge had positively treated the domestic circumstances as diminishing the severity of the offences; there may be a subtle difference between actually treating the domestic aspect as mitigatory and not fully taking into account all the circumstances which impact on the gravity of the offending. Be that as it may, we are satisfied that in a number of instances the trial judge took account of factors which are not relevant, and did so in a way which minimised the seriousness of the offending.

[31] In respect of each of the offences the trial judge identified "circumstances surrounding the commission [which] make the offences considerably less serious than they might otherwise have been". In particular, he suggests that the mere libel in charges 10 and 11 shorn of context, appears to make the charges more serious than they were when that context is examined.

[32] In relation to charge 10, he set out factors which in his view "puts a different complexion on the crime such that in some respects it becomes somewhat less serious". These included several irrelevant factors, e.g. that the parties had been in a relationship; that this was characterised by splitting up and reuniting, the offence occurred during a former phase; that the complainer had invited the respondent to her home, later at night; and that the offence was preceded by consensual sexual activity. In so far as the trial judge considered these factors to make the offence less serious, he fell into error.

[33] The trial judge notes that the respondent got into bed with the complainer's consent and that certain consensual sexual activity ensued.

[34] The report goes on to say:

> "[65] He then pulled her on top of him and started to insert his penis into her vagina. At this point, as she was perfectly entitled to do, she objected and said no.
>
> [66] He did not immediately desist and put his penis a little way into her vagina but the whole process was very short."

[35] This narration does not reflect what actually happened. It fails to acknowledge what when he "started to insert his penis" it was against the background that they had reached an agreement not to proceed to intercourse; that she had already physically repelled him by putting her knees in his way; and that he proceeded by leaning on her knees all in the face of verbal protestations.

[36] In relation to charge 11, the trial judge again considered that the libel, shorn of context, "does not give a true picture of the whole circumstances of the criminal activity." He notes that the initial sexual activity, when the complainer was asleep, would "in normal circumstances" be criminal but that the complainer more or less homologated it by reciprocating his advances when she woke.

[37] The report notes that the complainer agreed to anal sex but when it started felt it to be extremely painful and told the respondent to stop. "He did not stop and continued causing the complainer some considerable pain." The trial judge notes that the libel reads as if after consensual anal sex, the respondent again penetrated the complainer anally, which he points out was not the case, since "he did not actually leave her anus but her consent because of the pain was withdrawn." This is not in dispute and it was the complainer's evidence.

[38] What is omitted from the narrative however, is the evidence that the complainer only agreed to try anal sex in the first place because she had been put under pressure to do so by the respondent (who had a conviction for engaging in a course of abusive behaviour towards her) over a period of weeks. After commencing anal intercourse, rather than withdrawing the moment the complainer protested, instead he pushed in further, and held her in a grip which prevented her ensuring that he withdrew. She told him no on various occasions, told him it was sore and to stop, she yelped, attempted to slap him and attempted to pull away

[39] There is in our view nothing in the circumstances of these offences which might make them less serious than they appear from the libel, or generally.

[40] As to charge 4, the Crown concede that it was less serious than the other offences but submit that the trial judge was in error to describe it as a minor offence. Again we agree. The trial judge again considers that the context is relevant to assessment of seriousness, citing the parties on/off relationship over many years; and that the respondent had gone to the house at the complainer's invitation to see their daughter. However, from the narrative we have set out at para [6] it is not right to call it a minor offence.

[41] We are satisfied that in each individual instance the trial judge underestimated the severity of the offences, and this is particularly seen in respect of the section 1 aggravations. The trial judge notes the Crown assertion in the Note of Appeal that the respondent's actions indicate that he intended to cause harm, but does not connect it to the statutory aggravation under the 2016 Act. The Crown's reference in the Note of Appeal to the existence of the aggravations is addressed in the report with the observation "This is true but I do not see that this takes matters any further."

[42] It appears therefore that the trial judge had not appreciated the true significance of this kind of statutory aggravation as explained in *McGowan* v *HMA* 2024 HCJAC 20 and *Rizzo* v *HMA* 2020 SCCR 397. Certainly he has not complied with section 1(5)(d) of the 2016 Act which states that:

> "(i) where the sentence imposed … is different from that which the court would have imposed if the offence had not been so aggravated, the extent of and the reasons for that difference; or
>
> (ii) otherwise, the reasons for there being no such difference".

[43] The effect of that Act, and aggravations thereunder, was explained in *McGowan* (Lord Carloway):

> "[16] The Act makes it clear that the reverse should be the case by elevating that context to one of a formal aggravation. The sentencing exercise, no matter how artificial it may seem in some cases, thereby becomes one of selecting a punishment part for the offence, were it to occur in a non-domestic context, and then increasing it to take account of the aggravation (*Rizzo* v *HM Advocate* 2020 SCCR 397, LJG (Carloway), delivering the opinion of the court, at para [18]) …
>
> [17] No fixed percentage or other level of additional penalty is stipulated in respect of an abuse of partner aggravation of this nature, but its inclusion acknowledges the appropriate seriousness with which domestic offences are to be treated. It will no doubt depend on the circumstances of the cases, but it must be assumed that, although Parliament was content to leave the overall sentence to the discretion of the judge, it intended that the courts should normally add a significant penalty to that which would have attended a similar, but non partner abuse aggravated, crime…".

[44] Apart from this the trial judge's description of the offending behaviour overall understates its severity. The Crown Note of Appeal categorised the offending as amounting to:

> "a significant course of conduct against women he was in or had been in a relationship with. Two of the victims were assaulted on the same day. His offending showed an escalating pattern of severity."

[45] Taking issue with this, the trial judge stated:

> "He was convicted of three instances of inappropriate sexual conduct and there was no evidence that his offending "showed an escalating pattern of severity"."

[46] The words "inappropriate sexual conduct" do not reflect the severity of offending. The events can properly be described as a course of conduct. It is not unreasonable to describe it as showing a pattern of escalating severity, from his prior conviction under section 1, to anal rape in 2020, followed by both another rape and a sexual assault committed on the very same day just over a year later.

[47] In *HMA* v *RM* the it was noted that

> "when sentencing for a series of offences, the court must be alert to the risk that making the sentences consecutive might result in an excessive sentence; whereas concurrent sentences might not reflect the overall criminality of the behaviour on the indictment. In such cases there is much to be said for the imposition of a *cumulo* penalty which does so. This is recognised in McDade v HM Advocate 1997 SCCR 52;"

In *McDade* Lord Sutherland, delivering the opinion of the court, said (at 54):

> "If [the sentences] were made to run concurrently, it would mean that one set of offences would in effect be committed for free. If, on the other hand, they are made to run consecutively, this can result in a total sentence being imposed which is excessive in the circumstances. There are therefore some cases where it may be appropriate to impose a cumulo sentence …".

As noted in *RM* a series of offences constituting a course of conduct may provide the classic circumstances for imposing a *cumulo* sentence. Where such a course is adopted it is necessary for the court to consider both what sentence might have been appropriate for the individual offences, and how the criminality of the series of offences might be reflected properly, but without excess, in a *cumulo* sentence. In the interests of transparency and understanding of sentencing the court in *Fergusson* stated:

> "What ought to occur, if a cumulative sentence is selected, is that the judge should explain, at the time, what sentence would have been selected had the offence, or group of offences, stood alone and why a cumulative sentence of a lesser amount than the sum of the various sentences had been selected."

That approach was not adopted by the trial judge in his selection of 5 years *in cumulo*.

[48] We recognise that the respondent's mental health, though self-reported, his adverse childhood experiences which appear to have given rise thereto, and his personal circumstances were factors which the sentencing judge was entitled to take into account. The judge clearly gained the impression that the respondent suffered significant mental health issues having heard his evidence. The CJSWR expressed no doubt about what was being reported, and the existence of mental health issues is referred to within the papers at preparation stages of the case. There were, however, no mitigatory factors relating to the commission of the offences.

[49] Whether it was general underestimation of the level of seriousness of the charges, the omission to carry out the *Fergusson* exercise, or both which resulted in the figure of 5 years being selected we are satisfied that it is too lenient. In our view charges 10 and 11 might each have justified a sentence of 4.5 years prior to consideration of the aggravations; and charge 4 might have resulted in a sentence of about 18 months. The statutory aggravation would have increased charges 10 and 11 by a period of about a year. Charge 4 would have been increased by about 6 months to reflect both statutory aggravations which applied. The behaviour clearly constitutes a course of conduct, and to apply consecutive sentences would result in an excessive sentence, whereas a concurrent sentence would not reflect the degree of criminality involved. An overall *cumulo* custodial sentence of 8 years would be merited.

[50] The Lord Advocate submitted that an extended sentence should have been imposed. The trial judge erred in stating in his report that he was not entitled to impose an extended sentence when it had not been addressed in the CJSWR (*Steele & Spence* v *HM Advocate, supra).* Addressing the issue, the question for the court is whether the period for which the offender would be subject to a licence would be adequate for the purpose of protecting the

public from serious harm. Whilst the CJSWR indicates that the respondent is likely to reoffend in a sexual and domestic context, the offences of which he was convicted were perpetrated over a period of around 14 months. He has indicated his willingness to engage with offence-focused work, though there are currently obstacles to his doing so successfully due to his continued denial of the offences. Were the court to impose a custodial term of 8 years, there would in all likelihood be a commensurate increase in the period of licence. We are not satisfied that the test for the imposition of an extended sentence has been met.

[51] We will allow the appeal, quash the sentence imposed by the sentencing judge and substitute a *cumulo* sentence of eight years' imprisonment.