

**Please note the automatic reporting restrictions imposed by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013.**

**This judgment has been redacted where indicated by square brackets.**

Indecent assault of a minor.

**[2021]GRC035**

**ROYAL COURT  
FULL COURT**

**27 May 2021**

**Before: Catherine Maureen Fooks, Judge of the Royal Court and:  
Stephen Murray Jones OBE, Claire Helen Le Pelley, Terry John Ferbrache,  
Steven John Morris, Joanne Marie Wyatt, Peter Francis Gill, Tina Jane Le Poidevin,  
Paul Martin Burnard, Jurats.**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**Daniel Graham PENNEY**

**Crown Advocate C G Dunford appeared for the Crown  
Advocate O C Fattorini appeared for the Defendant**

**JUDGE OF THE ROYAL COURT:**

Mr Penney you have pleaded guilty to a single count on 1 indictment.

That Count is that on 20<sup>th</sup> February 2004 you indecently assaulted Miss A, a female child of the age of 6 years. This is a common law offence and there is no maximum sentence.

This offence took place on 20<sup>th</sup> February 2004 when you were 15 years old. You were at the home of Miss A because, at that time, you were best friends with her older brother. You were well known to Miss A as you visited the house regularly and stayed overnight on occasion. You and he had been watching television. You left your friend at about 9 p.m. and went to Miss A's room where her brother found you sitting on a bed with her playing a peg board game with beads at the bottom of the bed. You told him that you were playing with the beads. He left you there.

When your friend returned to the bedroom about 30 minutes later, he was concerned that little progress had been made with the game, so he spoke to his mother. Miss A disclosed to her brother that she had been indecently assaulted. He challenged you and you denied it, but left early the next morning without having breakfast. Miss A disclosed the indecent assault to her parents on 22<sup>nd</sup> February and they notified the police who opened an investigation. This investigation did not result in a prosecution as there was felt to be insufficient evidence. Miss A asked that the case be reviewed in 2019 when she was a young adult.

There was an ABE interview with Miss A on 23<sup>rd</sup> February 2004 in which she described the assault in some detail. She described [... the assault in detail]. She also said that you had told her to keep it a secret.

There were 2 medical examinations in 2004, the details of which were set out in the Prosecution outline. There was clear evidence of injury in the form of abrasions. Dr Bohin was asked to review the findings in 2019 and was able to conclude that there was evidence of penetration with an object. She reported that there was “quite convincing clinical evidence of sexual abuse”. Forensic examination of the object in 2004 and 2019 yielded no evidence linking it to you or the assault for the reasons outlined by the Prosecution. You do not dispute the Prosecution facts.

You were interviewed in 2004. You admitted being alone with Miss A but denied any assault. You were interviewed twice in 2019. You claimed not to be able to recall very much and blamed alcohol consumption from the age of 17. You denied any wrongdoing. You suggested that witnesses might be lying. In the second interview you maintained your denials.

You were charged and first appeared in Court on 6<sup>th</sup> January 2020. Covid delayed the progress of the trial. You pleaded Not Guilty on 20<sup>th</sup> August 2020. Following an unsuccessful challenge to the Prosecution based on abuse of process, you entered a Guilty plea on 8<sup>th</sup> April 2021.

The impact on Miss A of the offence was immediate and evidenced in the extensive medical history from as early as March 2004. The impact is very significant and is continuing. She has suffered physically and mentally. The Prosecution summarised the effects from Miss A’s medical records which include profound anxiety, fear generally but especially of sleeping alone, abdominal pain, anorexia nervosa, intrusive thoughts and depression. Dr Bohin summarised the effects as deep and long lasting.

Miss A has filed a victim impact statement which is harrowing. She describes the impact on her right from the age of 6. It led to a move from the family home. She has been undergoing various therapies ever since – 17 years. It impacted her school life, and it continues to impact her social life, family life, relationships with men and employment. The reopening of the Court case has brought anxiety and angst. She lives in fear of meeting you. She said this: “Everywhere I go...I am always vigilant and watching. This has become normality for me, I constantly live in an anxious, heightened state and I often avoid public places.”...“ I strongly believe that if I hadn’t been the victim of sexual assault when I was 6 years old by Daniel Penney, my life would have been vastly different. There is not a day that goes past that I don’t think about what he did to me....and how being sexually assaulted as a 6-year-old child has impacted my life.”

You are a local man of 32 years of age. You are in employment. You have no convictions of a similar nature or which are relevant. You have been on bail throughout the proceedings.

### **Sentencing Considerations**

The offence of indecent assault covers a wide range of indecent acts. We are not bound by English cases but find it helpful to follow the valuable general guidance set out in the leading English case of R v Millberry (2003). The degree of harm to the victim, the level of culpability and the level of risk are the appropriate factors.

Similarly, we are not bound by the English Sentencing Guidelines, but find them helpful in listing aggravating and mitigating features. We note that in England, assault of a child under the age of 13 by penetration is a specific offence under Section 6 of the Sexual Offences Act, 2003. The Court of Appeal in the recent case of Andrade v Law Officers 2021 Guernsey Court of Appeal 005 has approved the comparison of conduct amounting to penetration of a child with the English offence and reference to the applicable English Sentencing Guidelines, whilst also restating that the Guernsey Court is entitled to sentence to reflect the concerns in Guernsey about serious offences of sexual violence.

There are aggravating factors present in your case as follows:

- 1 The age of Miss A, just 6 years old.

- 2 The penetration of Miss A and with an object.
- 3 The physical pain and injury caused to Miss A.
- 4 The significant psychological harm to her.
- 5 The breach of trust - as a close family friend and an older child, Miss A trusted you and you breached that trust.
- 6 The fact that the assault took place in her bedroom, a place where she was entitled to feel safe.
- 7 The fact that the assault led to the loss of her home.
- 8 The fact that you told her to keep it a secret.

The assault had a life changing impact on the victim, to which we will return.

We note that this is a single offence, which in no way minimises its impact but counts as an absence of an otherwise aggravating factor.

Your age at the time of the offence is a very relevant factor in sentencing you. As a matter of legal principle, we must sentence you no more severely than you would have been sentenced at the time of the offence.

Had you appeared before the Court as a 15-year-old, the Court would have taken account of your age and inherent lack of maturity. Immaturity can impact on decision making and appreciation of harm. In sentencing a juvenile, the welfare of the juvenile and his/her rehabilitation are particular considerations. A sentence of immediate custody should be a last resort and should be the shortest possible commensurate with the seriousness of the offence. Nonetheless, the sentence has to reflect the seriousness of the offence.

There can be no doubt that this offence crosses the custody threshold.

The Youth Detention 1990 Law would also have applied, had you appeared for sentence in 2004. We have considered it, especially section 2 which sets out the test for passing a sentence of youth detention. We are satisfied that this offence is so serious that a non-custodial sentence is not justified and could not have been justified had you been sentenced in 2004.

### **Starting point**

There is no fixed mathematical formula for arriving at a starting-point and each case has to depend very much on its own particular circumstances. The factors we have just mentioned seem to us to make this case a serious one. We would have started at 9 years, had you been an adult. We apply a discount to that of 50% to reflect the fact that you were a child at the time of the offence.

### **Mitigation**

The court must first consider the impact of your guilty pleas on sentence. Your guilty plea was late. The delay in entering it will have increased the stress on Miss A. But you did enter it and spared her the ordeal of a trial so we will afford you a discount of the full one-third for your plea, together with the mitigation set out below.

The Court has considered carefully the Probation Report prepared in respect of you, but is concerned that, as a consequence of your lack of recollection, the Probation Officer has been unable to form a solid assessment as to the likely factors relevant to you reoffending, and potentially more importantly, what may, if anything, increase your likelihood of reoffending in a similar manner in the future.

We have also listened carefully to the well-made submissions of your Advocate and taken them into account. We take account of the fact that you were 15 at the time of the offence and that, had you been prosecuted when a juvenile, your youth and immaturity would have been a mitigating factor. We note that there has been no other offending or reported concern of a sexual nature and that there appears to be no particular concern about your sexual behaviour, but the Probation Officer is largely working in the dark as you have not provided the relevant information.

Importantly we treat you as a person of good character.

You are assessed as having a low risk of re-offending but your lack of memory casts some doubt on the accuracy of that assessment. The Probation Officer does feel able to say with more confidence that the historic nature of the offence, and that there has been no repeat, does indicate a low risk of reoffending. There is a lack of information as to factors which might need to change to avoid reoffending. Based on the information, such as it is, the assessment is that there is no evidence that you pose an ongoing risk of sexual harm.

The Probation Officer does not recommend any statutory supervision, a Probation Order, an Extended Licence or Sexual Offences Prevention Order. The assessment is that your management by MAPPA and the Notification requirements are sufficient to manage any risk you might pose. It is said that you have the skills to avoid further offending as demonstrated by 17 years of no sexual offending and the salutary lesson of going through the current proceedings. We hope that this is so.

### **Sentence**

You have committed a serious indecent assault on a young child who trusted you. The impact on her has been life changing. In the circumstances an immediate custodial sentence is the only appropriate sentence. We have taken account of your age at the time of the offence.

Taking into account all the above and applying what discount we can, the sentence will be one of 3 years immediate custody from today.

### **Notification**

Having been convicted of a relevant offence under the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, you become subject to the notification requirements under Part II of that Law.

We follow the recommendation of the Probation Officer that the notification period should be 5 years, which runs from the date of your guilty plea on 8<sup>th</sup> April 2021. This period is a precaution against any risk you may pose and can be further extended. You will be given a written notice setting out all the requirements of being a notifier, but in summary they are:

- You are now required by Law to notify the Police within 24 hours of your name, any other names that you use, your address, your date of birth, your social security number, your passport details, your bank account details and your employment details. If asked to do so, for verification purposes, you must allow your fingerprints, photograph and/or a DNA sample to be taken.
- You must notify the Police of any change of name or home address at least 24 hours in advance of the change occurring, or within 24 hours if you had no prior knowledge of the change occurring.
- You must notify the Police of any address where you reside or stay for 7 days or longer. This means either 7 days at a time or a total of 7 days in any 12-month period.

- You must notify the Police of your details every 12 months on the anniversary of your initial notification, even if there is no change in these details.
- You must notify the Police at least 7 days in advance of any plans to travel abroad.

### **Supervision**

In accordance with section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, upon release (or completion of any parole period if applicable), you will be subject to supervision by the Probation Service for a period equal to one-quarter of the total sentence, or the period you would have served had you not received remission, whichever is the shorter. If you fail to comply with the conditions of the supervision, you will be liable to further imprisonment, a fine, or both.

### **Media Restrictions**

I remind the media of the automatic reporting restrictions imposed by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013.

**Catherine Maureen Fooks**  
**Judge of the Royal Court**

**27 May 2021**