THE COURT OF APPEAL

Record No. 79/2023

Birmingham P.
Edwards J.
McCarthy J.

Between/

THE PEOPLE

(AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)

Respondent

V

JOHN McCLEAN

Appellant

JUDGMENT of the Court delivered by Mr. Justice Edwards on the 4th of July 2024.

Introduction

1. Before this Court is an appeal brought by Mr. John McClean (i.e., "the appellant") against the severity of the sentence imposed on him by Dublin Circuit Criminal Court on the 24th of February 2023. The offences for which the appellant was sentenced related to indecent and sexual assaults he had perpetrated against numerous students while working as a teacher and rugby coach at a secondary school in Dublin in the 1970s, 1980s, and 1990s.

2. On the 16th of December 2022 the appellant was sent forward for sentencing in the Circuit Criminal Court on signed pleas of guilty in respect of four counts of indecent assault on Bill No. 1581/2022.

3. He further entered a guilty plea in respect of twenty-one counts of indecent and two counts of sexual assault on Bill No. 1320/2022 on the 21st of February 2023. In respect of the latter bill, the guilty plea entered was on an full-facts basis with it being agreed between the parties that while the appellant would only enter a plea in respect of certain counts, evidence would be given in respect of other counts relating to each complainant.

4. On the 24th of February 2023, the Circuit Criminal Court sentenced the appellant to a custodial term of 4 years, which such sentence was to date from the lawful expiration of an effective 8-year term of imprisonment he is currently serving in respect of other sexual offending on Bill No. 159/2020.

5. By Notice of Appeal dated the 22nd of March 2023, Mr. McClean now appeals against the severity of his sentence. He has advanced the following grounds in support of his appeal:

> "*1. The sentence of four years imprisonment consecutive to a sentence of eleven years with three years suspended was unduly severe in all the circumstances.*
>
> *2. The learned sentencing judge erred in law and in principle in failing to identify a headline sentence.*
>
> *3. The learned sentencing judge erred in law and in principle in failing to justify why a consecutive sentence was required in the circumstances.*
>
> *4. The learned sentencing judge erred in law and in principle in failing to give sufficient weight to the personal circumstances of the appellant, in particular his age and health.*
>
> *5. The learned sentencing judge erred in law and in principle in failing to give sufficient weight to the mitigation, in particular the admissions and early pleas of guilty.*
>
> *6. The learned sentencing judge erred in law and in principle in refusing to consider suspending a portion of the sentence imposed in light of the accused's personal circumstances and in light of the sentence previously imposed by another Circuit Court Judge*".

Factual Background

6. At the sentencing hearing in the Dublin Circuit Criminal Court on the 23rd of February 2023, a Detective Garda James Duffy (otherwise "D/Garda Duffy") gave evidence in relation to the factual background of the appellant's offending.

Previous sentencing in respect of Bill No. 159/2020

7. D/Garda Duffy had been part of the investigation into the appellant's offending from the outset. He testified that a number of years prior to the present matter coming forward for sentencing in the Circuit Criminal Court, twenty-three complainants came forward and alleged that they had been sexually abused by the appellant while enrolled as pupils at a secondary school in Dublin (i.e. "the college"). The appellant had taught at this school between the years 1966 to 1996, served as a first-year form master from 1980, and had been involved in coaching sports at the school. Arising out of these complaints, charges were preferred under three separate bill numbers, which were dealt with, and the appellant had entered guilty pleas. The appellant was subsequently sentenced in respect of this offending to consecutive custodial terms which cumulatively amounted to a total of 11 years, with 3 years thereof suspended. At the time of sentencing in respect of the present matter, the appellant was in custody serving the aforementioned sentence.

8. D/Garda Duffy confirmed that the appellant's sentencing in 2021 was the subject of publicity, and that arising out of this a number of other victims came forward to the gardaí. These

victims included two individuals who had made contact before the appellant's sentencing in 2021, but the majority of the remainder had come forward afterwards.

9. D/Garda Duffy then outlined the factual background to the appellant's offending in respect of each individual complainant. In circumstances where the reporting restrictions applied in the court below in respect of naming individual complainants, each of their names will be anonymised in the present judgment using the format complainant A, B, C, *et seq*.

Complainant A

10. The appellant's offending in respect of complainant A occurred in the context of sports coaching. Complainant A, then aged 17 years, had suffered an injury in his right thigh just prior to a particular school sporting event and the appellant had decided to treat the injury. He invited complainant A to attend at the college at 7pm whereupon the appellant met complainant A in a reception area and brought him to an upstairs room. There, the appellant asked complainant A to remove his trousers and underwear, and he then proceeded to rub generally around the right thigh and groin area. This was repeated over a number of minutes and complainant A recalled that he thought at the time that there was not much methodology in what the appellant was doing to him. He reported feeling extremely uncomfortable in circumstances where his private parts were exposed. No touching of complainant A's private parts occurred. The appellant stopped rubbing complainant A's thigh, and suddenly left the room.

11. Complainant A stated that he did not realise how inappropriate the incident was until he was an adult, and that media reporting of other offending by the appellant caused his memories of this event to resurface. He said that he had picked up the telephone a few times to report the appellant's behaviour but did not; and that it had cropped up in conversation with old school friends in the past. He stated that the incident has not impacted him in "*any significant way*" over the years, but that it is something he thinks about "*from time to time*" in circumstances where it is "*triggered*" by something in conversation or by something reported in the media.

Complainant B

12. Count nos. 2, 3, 4, 5, 6, and 7 all relate to offending perpetrated by the appellant against complainant B, who came forward to gardaí after the appellant's sentencing in 2021. The appellant entered a guilty plea on count no. 2, which was on an agreed full-facts basis.

13. Complainant B was heavily involved in sports while at school and remembered the appellant as his coach. He recalled the appellant being "*the man that treated you if you had an injury*", and in this context, at the age of 12 years, he presented to the appellant on at least six occasions with an ongoing sports injury. He recalled the appellant bringing him into "*the smoking room*" (which was described as a void under the stage in the concert hall situated on the school grounds) and there the appellant would request that he remove his clothing from the waist down. He would then have complainant B lay down, and he would stand beside him. The abuse would start by the appellant massaging the sore thigh, and from there the appellant's hand would move to rub the appellant's genitals.. He recalled how would have been there for about an hour, but that about 15 minutes of that period would have been for physiotherapy.

14. Complainant B stated that he remembered feeling at the time that it was wrong, but that he did not know why. He never spoke to anyone about what transpired. He said that what had

occurred would have felt wrong and confusing to him at the time, and that he "*kind of buried it*". He stated that upon reflection, the appellant's offending probably created some issues for him in terms of trusting authority figures. He said that he had already felt vulnerable and different in terms of his attendance at the college, on account of certain personal history. He said that media publicity surrounding the appellant and the resulting publication of the appellant's picture on a website or in a paper struck him "*with fear*". He continued, stating that the appellant's eyes are the pre-dominant factor striking fear in him, noting that he would have always been in a supine position when the appellant was interfering with him.

Complainant C

15. Complainant C attended at the college in the early to mid-1970s. Over the course of two years the appellant, who was the then boy's teacher, sexually abused complainant C who was roughly aged 14 years. This sexual abuse was the subject matter of three counts of indecent assault (count nos. 8, 9, and 10). The evidence in relation to these counts was agreed on a full-facts basis, and on this basis the appellant entered a guilty plea in relation to count no. 8.

16. It was said that the first occasion of sexual abuse transpired after a class during which complainant C was told off for talking and was asked to remain in the classroom at the end of the lesson. Once all the other students left the classroom, the appellant stood with his back to the classroom door and asked complainant C what age he was. Before he could answer, the appellant grabbed him by the crotch and said "*You are so childlike and I wonder if you are developing properly*". Complainant C recalled the appellant "*held on*" to the appellant's genitals for a long time. He said that they were there in that position for around five minutes, and that while some students tried to enter the classroom, their attempts at entry were frustrated by the appellant who had his back to the door and would not allow them in. Complainant C recalled feeling very embarrassed.. The appellant ceased to hold onto the complainant's crotch area, said "*That's all*", and stood aside. Complainant C said, "*I ran away from the room. I was absolutely terrified*".

17. Another occasion on which the appellant abused complainant C was when the complainant was put outside the door to a classroom by another teacher. The appellant came along and grabbed complainant C's private parts again, saying that he was checking the complainant's "*development*". This encounter which took place in a corridor on the ground floor of the school building outside of a classroom was said to have lasted about five minutes, during which the appellant "*fondled*" the complainant's groin outside his trousers.

18. On another occasion when complainant C was put outside the classroom, he hid inside the school lavatory. He recalled feeling "*devastated*" when the appellant walked in. He was told by the appellant to go with him, and he was taken to the stationery office which was closed between classes. The appellant unlocked the door and told complainant C to go inside, and when inside the appellant locked himself and complainant C inside the room. Reference was made to a type of locking mechanism in use on this room's door which enabled the appellant to prevent someone from unlocking the door from the outside. When inside the room, the appellant told complainant C that he wanted to check his development, but on this occasion he told the complainant "*to take it out*". Having exposed himself to the appellant, the appellant was said to have "*fondled*" and "*rubbed*" the complainant C using his right hand in such a manner as if he was masturbating him; with his left hand, the appellant was said to have felt his own genital area through his trousers.

Complainant C said that this encounter caused him to burst into tears and to become very emotional. Complainant C said that this was the longest-lasting encounter with the appellant, spanning a period of some 10 to 15 minutes from the time the appellant found complainant C in the lavatory; the assault lasted for at least 10 to 12 minutes of that period.

19. Complainant C remarked on the impact of the appellant's offending on his life:

> "*I've tried to repress the effects of the treatment of John McClean's hands. It affected my education, my relationships with women and my confidence. It's caused me many many sleepless nights and recrimination of myself of being gutless not telling anybody at the time. I've had some counselling for my issues and my intolerance and excessive drinking. I had tried to put this behind me but when I read the newspaper reports in early 2021 it all came flooding back and I was devasted.* [...] *After I heard it I just lost it*".

He went on to state:

> "*To this day this had a profound effect on my life. I feel I never reached full potential in my relationships, my education and myself as a person. This has always hung over me and I'm glad to be able to express the effects it had on me now*".

Complainant D

20. The offending which related to Complainant D formed the subject matter of count no. 11. Complainant D, then aged approximately 12 years, had participated in a friendly sporting event organised by the appellant who acted in a referee-type capacity. When playing, the appellant told complainant D that he had muscle strain, and complainant D insisted that he did not. After the game had concluded, the appellant helped complainant D carry the equipment back to a storage room, and once inside there, and despite complainant D's refutation of having any muscle strain, the appellant insisted that he should look at it. The appellant got the boy up onto a physiotherapy table, and there told him to take down his trousers. Complainant D complied, recalling "*I didn't know what was going on, looking back I was naïve, but also McClean wasn't the sort of teacher you questioned or argued*". The abuse which then took place culminated in the rubbing of the left leg of an exposed complainant D. The appellant did not touch complainant D's genitalia. This encounter lasted approximately 15 to 20 minutes.

21. Complainant D spoke of the impact of the appellant's offending on his life. He said that he did not tell his parents what had transpired, that he instead hid and locked it away and moved on. He spoke of suffering from depression for a number of years.

Complainant E

22. Count no. 12 related to Complainant E and concerned events which transpired at some time during the currency of a school year in the 1970s. He had approached gardaí at some point prior to the appellant's sentencing in 2021 but did not make a formal statement until sometime thereafter.

23. The complainant was aged approximately 15 to 16 years at the time of offending, which occurred in the context of a lesson. The appellant, who was complainant E's teacher, approached the boy's desk from behind and there pressed his erect penis against the boy's left shoulder. The

encounter lasted for a couple of seconds. Complainant E said that he knew the appellant had an erection and that he could feel it pressed against him. He did not react at the time.

Complainant F

24. The appellant's offending in respect of Complainant F was the subject matter of count no. 13. The appellant was the complainant's teacher. The context to the offending in respect of Complainant F was that his father had been diagnosed with a terminal condition and the school was informed of this. Complainant F recalled the appellant coming to him to console him and assure him of his support, stating that should he have any problems he could go to him. Within the course of the following year, complainant F experienced a number of incidents with the appellant.

25. One such incident occurred in the context of a school play. Details regarding this incident are somewhat sparse but from the transcript of the 23rd of February 2023 it can be understood that the incident did not involve physical contact, but it concerned the complainant wearing tights and pulling his jeans down and up very quickly. He and the appellant exchanged eye contact which the complainant understood as the appellant saying, "*well now I am your enemy*". The complainant ran away shortly thereafter.

26. A number of incidents occurred in the context of lessons taught by the appellant whereby the appellant would pleasure himself by rubbing himself off the desk. Again, there was no physical contact, but complainant F does recall on one occasion placing chalk to mark an area where there might be contact with his desk, and it transpired that this chalk transferred to the cape or gown of the appellant. Complainant F recalled that he always felt "*menace*" with the appellant. He referred to an incident where the appellant pulled him in under his cape. The complainant spoke of how the appellant would use his hands "*like talons*" and squeeze them into his shoulders; how he could feel the appellant's erect penis pressing into his back; and how the appellant would "*dry hump*" him. It was said that this incident lasted one minute.

27. Another similar incident occurred in circumstances where the appellant had brought complainant F up to the top of the class to make an example out of him. Complainant F recalled being stood at the front of the class with the appellant stood behind him. Both facing the class, the complainant could not move as the appellant's "*talons*" had him pinned, and while in this position he was "*dry humped*" by the appellant. Complainant F recalled this encounter lasting about 30 to 40 seconds, after which he managed to wriggle free. He said that the appellant continued to "*pontificate*" to the class as the incident transpired. A further similar such incident occurred on another occasion, but the complainant stamped on the appellant's instep and wriggled free. Complainant F stated *inter alia* that when this occurred he did not say anything to anyone, that he was terrified, and that he felt "*sleazy and squalid*".

28. Complainant F tendered a poignant victim impact statement to the sentencing court. On account of its length, we do not intend to reproduce it in full. For the purposes of the present judgment a precis of Complainant F's victim impact statement will suffice.

29. He recalled that as a younger pupil at the college he and his classmates had been warned by older students to avoid the appellant, especially in a confined space. He said that he learned this the hard way. He stated that the appellant had "*set his sights*" upon him immediately after his father's diagnosis and that the appellant had approached him under the pretence of support and reassurance. Complainant F said that this marked the beginning of his grooming by the appellant,

which he eloquently described as "*that inexorable erosion of my innocence for his own callus warped desires*". Complainant F stated that arising out of this experience, he quickly became truculent or aggressively defiant, and had sought to outmanoeuvre the abuse at the hands of the appellant; he learned to fight for survival, using humour and cunning, and to that end devised ways to avoid the "*constant*" possibility of *inter alia* being groped and humiliated. He stated: "*Those who promised to protect and nurture me became those who either wished to defile me or those who looked the other way. And so began my lifetime distrust of authority*". Complainant F stated that he suppressed his experiences for nearly 50 years, and that his defences in this regard were torn down by the birth of his first child, and arising out of this he chose to confront what had occurred at the appellant's hands.

Complainant G

30. The events the subject matter of count no. 14 relate to offending perpetrated by the appellant against Complainant G who was aged approximately 14 to 15 years old at the relevant time.

31. In his third year at the college, complainant G started to play sport competitively for the college, and he was coached by the appellant. On an occasion of an interschool sporting event, the complainant sustained an injury to his calf and could not walk as a result. He was brought over to the appellant who drove him back to the college and took him to a room at the end of the training rooms. He recalled being on his own in the room for about three to four minutes before the appellant entered and asked him to undress. The appellant then asked the complainant to lay supine on the treatment table. The appellant then proceeded to inspect the affected calf, and then moved his hand up the leg expressly on the pretence of checking for other damage. The appellant then "*pressed*" the complainant's groin area for about two to three minutes. Complainant G stated that he knew at the time that what the appellant was doing was inappropriate.

32. The abuse continued; having complied with the appellant's request to roll over, complainant G lay prone on the treatment table as the appellant repeated the same hand movement. Complainant G said that the ordeal went on for approximately 5 to 10 minutes, that it was inappropriately long, and that most of the examination was inappropriate and unnecessary. He stated that touching of his genitals by the appellant would have occurred while he was on his feet. He recalled "*I was afraid. I was frightened of the situation and just wanted it to be over. John McClean then left the room to contact my parents and I got dressed as quickly as I could. When my mother picked me up she said I was as white as a ghost. I told her it was just the injury*".

33. Complainant G recalled that he had a further encounter with the appellant two to three weeks into the injury, albeit an encounter which did not on this occasion feature physical touching. He recalled being late to school because he was cycling. Having been pulled up for being late, the appellant asked him to come to his office. There, the complainant was asked by the appellant to drop his trousers so he could check the injury. On guard from the last encounter, the complainant complied but assured the appellant that he was back walking and told him he had to get back to class as he was already late.

34. Complainant G also spoke of the impact of the appellant's offending on his life. He stated that he tried to deliberately avoid the appellant in any situation where he would otherwise be on his own with him; he did not try for the college's team in later years; he lost interest in the

particular sport after the incident, and said that his ambitions to play it were affected; his whole attitude towards his education and the school were affected; he started drinking heavily in fifth and sixth years in a manner which he described as different from that of his peers; that this lifestyle persisted into his twenties and that he experienced work problems during this period, and; he made reference to being on medication, suffering various alcohol problems, hospitalisation from panic attacks, and attendance at a psychologist and training.

Complainant H

35. Count no. 15 concerned an incident involving complainant H who was aged approximately 15 years at the relevant time. Complainant H knew the appellant as his teacher in his first year of secondary schooling and as the coach of one of the college's sports teams. He recalled experiencing an issue with a groin injury after training and informed the appellant of same as they were leaving the pitches. Telling the complainant that he wished to assess the injury, the appellant brought him to the previously mentioned smoking room under the concert hall stage. Unsure as to why the appellant decided to bring him there to assess an injury, he recalled that there was a medical table in the room. The appellant asked complainant H to undress and to lay supine on the table. Similar to other complainants' experiences, the appellant proceeded to touch in and around complainant H's groin area under the false pretence of inspecting an injury. Complainant H recalled, "*He was sayings* (sic) *that the injury was nothing to worry about while he was assaulting me. I would say that this whole episode only lasted about ten minutes. I now know that he brought me to that location because he knew there would be nobody there and he would not be disturbed. There was no other reason for him to bring me there*". He further remarked that the room could only be opened from the outside using a key which the appellant had.

36. Complainant H stated that he told his wife in the 1990s what had transpired at the appellant's hands when he was younger. He stated that the incident affected his self-esteem over the years.

Complainant I

37. Count no. 16 relates to an incident concerning Complainant I who was then aged 13 to 14 years. As was the case for the other complainants, Complainant I knew the appellant as a coach and first-year form master. He recalled that the appellant, in his capacity as a senior teacher at the college, would patrol the corridors during lessons. On one occasion, after having being put out of the classroom, the complainant had worked himself into a state of upset. The appellant, having approached him and seeing that he was visibly upset, asked if he wanted to go to his office. There, the complainant confided in the appellant about certain personal matters pertaining to his home life, and he became upset once more. The appellant sought to reassure the complainant about being removed from class, placed his left hand on the complainant's shoulder, and then went about trying to straighten the complainant's purportedly "*dishevelled*" uniform. In the course of this physical contact, the complainant recalled the inside of the appellant's right hand brushing over his genital area twice.

38. Complainant I said that he immediately felt uncomfortable, that he knew it was wrong, and that he had an immediate sense of relief when he left the office, and that he thought he had got away "*lightly*". Complainant I stated that from then on if he was ever removed from class, he

would always hide in the lavatory and lock the cubicle. He would time his being sequestered there, such that he would be back outside the classroom when lessons finished. He stated that he did this to stop any interaction with the appellant.

Complainant J

39. Complainant J's experience with the appellant, at age 15 to 16 years, was the subject matter of count no. 17. Similarly to some of the foregoing counts, the abuse occurred in the context of a sports injury, namely a twinge in the complainant's groin. The appellant brought him to the treatment room and similarly to the foregoing complainants, complainant J was requested to remove his lower clothing and underclothing. He queried as to why that was necessary, and he was told by the appellant that he needed to "*get to the source or cause of the strain*". Complying with the appellant's request, the complainant thereafter sat on the edge of the bed. He recalled there being another person in the room, but that this person's view of what the appellant was doing the complainant was obscured by the appellant being in the way. In the course of this contact, the appellant touched the complainant's genitals. The complainant immediately bristled and recoiled, asking in a loud voice "*What are you doing?*", to which the appellant replied that he just had to get to the strain. He rubbed the complainant's right groin for around 30 seconds.

40. Complainant J stated that for about two weeks after this encounter his thoughts were preoccupied with had occurred. He went into himself during this time, and he was not himself. He said that he felt unsure and was "*a shadow*" of himself. He estimated that the encounter with the appellant lasted some 8 to 12 minutes. He surmised that the unnamed figure who was in the room at the relevant time was pretending not to notice what was going on but was there to provide protection from the appellant. He stated that he believes that the appellant's behaviour could have been worse if that figure was not present.

Complainant K

41. Count no. 18 relates to offending perpetrated by the appellant against Complainant K, who was then aged 12 to 13 years. As in the case of some of the previous complainants, Complainant K's encounter with the appellant started with him being put out of the classroom for reasons of misbehaviour. While stood outside the classroom, complainant K was approached by the appellant who brought the then boy to his office. There then followed an episode of corporal punishment, which involved the application by the appellant of six, fanned, 12-inch rulers to the complainant's buttocks and was followed by the appellant rubbing the affected area. Complainant K stated that the episode of corporal punishment was accompanied by questions asking whether he was sorry or whether he was sore. He further said that the appellant acted with pretend regret and that he gave the complainant a hug. He recalled seeing their reflection in a glass cabinet, saying "*I could see he was pushed against me with his waist pushing and -- I was being pushed forward on to him and he was arching back with his penis pushing against me*". Complainant K believed that the hug was sexual, and he stated that he knew it was wrong for a teacher not only to be hugging him but for him to be arching his waist and penis into him. He recalled the appellant praising him and telling him to come back to him the following week. He said that he made sure he never went back, and that he made sure he was never caught in the corridor if he was kicked out of a classroom.

42. In a victim impact statement which was read into evidence by counsel for the prosecution, Complainant K stated *inter alia*:

> "*I don't want to go into the actual details of what happened in his office, in any case it's in my witness statement. It's safe to say it follows the pattern of the others who have shared their stories. It's also safe to say it was on the lower end of the scale compared to some. However low on the scale it had a huge impact on my childhood, teenage years and early adulthood and still has an effect today. It was an adult using a child, me, for sexual gratification. My first experience of anything to do with what I come to understand is sexual desire used for an adult's amusement. The first effect was anxiety, something I hadn't felt before. The last word said to me after was come back next week. This filled me* [with] *a constant terror of being caught. I find ways of avoiding corridors, staff rooms, empty rooms, anywhere I could be caught. If I got kicked out of class, which I did more often, after I knew I couldn't stay there. I'd find places to hide in school, under the church, under the concert hall, in the little used meeting room. Always anxious of being caught. It seemed like -- it seems like every week I'd end up with the matron for stomach -- stomach cramps. Looking back it was all anxiety. Hiding became a habit and I'd move further afield* [...] *I began to hate school so much I'd miss class, and then days, then weeks. I despised authority because that's what the perpetrator represented. Adults used to say school days were the best days of my life. I couldn't understand that because I had become such a miserable kid*".

43. Complainant K then spoke of the mental anguish caused by the legacy of the appellant's offending when he was coming to terms with certain personal matters. He said that he became suicidal as a result, and had attempted to take his own life, which he described as a serious attempt to save him from becoming the same type of person as the appellant.

44. Complainant K did not finish his schooling at the college. Notwithstanding his experience at the college, he managed to succeed in life. He stated:

> "*I succeeded in spite of my school and what went on there but it was hard work and still is. Do I still feel shame? Yes. Have I had to work all my life to overcome the shame and grubbiness I associated with sex and sexual desire? Yes. Do I still steer clear of* [the college's location] *to avoid that knot of anxiety I'll inevitably feel passing? Yes. Do I resent having to relieve it again and feel all that shame and – like I'm a kid again, like it was all yesterday? Do I still feel -- feel like I did something wrong? Yes* [...] *I'll end by saying that my life would have been a whole lot easier if it never took place, if it wasn't allowed took place* (sic)".

Complainant L

45. Count no. 19 on Bill 1320/2022 related to offending against complainant L who was then aged 12 to 13 years. The appellant was Complainant L's first year form master and first year teacher. When his father became very sick, news of same went around the college. When attending a lesson, the appellant knocked on the classroom door and asked for Complainant L to leave class. The complainant stated that this request was very unusual. He was brought to the appellant's office and there the appellant asked him about his father and whether everything was alright at home. In the course of this conversation, he recalled certain physical touching by the

appellant which started in or around the facial area and progressed down to the complainant's knees and groin area. Complainant L said that he did not react and remained "*motionless*". Complainant L said that the motion of the appellant's hand was slow and deliberate, and described the period of contact as long and not just a brush. Complainant L recalled that once contact had been made with his privates, he attempted to push the appellant away, which prompted the appellant to state "*I was just making sure you were alright*". He told the appellant he was fine, ducked under the older man's left arm, and returned to class.

Complainant M

46. Count no. 20 related to Complainant M who was approximately 17 years old at the relevant time. In fifth year he was playing sports competitively for the college and was coached by the appellant. In the run up to Christmas the complainant struggled with an injury which was affecting his building of fitness in advance of a competitive sports season which was to start in the New Year. One evening after a training session, the complainant sustained a groin injury, and he was asked (by whom exactly, the complainant could not recall) to go to the college's gymnasium after the session. There he saw the appellant, and the pair went to a changing room without any windows in which the complainant had never been before. The appellant asked the complainant to remove his training shorts and to sit on the physiotherapy bed. In a similar fashion to preceding complainants, complainant M recalled the appellant's treatment beginning on his injury and he described how the appellant was rubbing his groin. He stated that the appellant was not a physiotherapist but was the only coach for the particular sports team at the time. He described the appellant's actions as "*fiddling around at the top of his leg*", and that the appellant had asked the complainant to remove his underwear. He recalled how the appellant had touched his privates under the pretence of accessing the affected area but that when he had finished rubbing the complainant's groin, the appellant had touched it again. The complainant recalled that the appellant never rubbed his left leg and that the injury he had was confined to his right groin. There was silence throughout the incident, which was said to have lasted approximately 15 minutes. Complainant M said that during the incident he remembers feeling in total shock and total surprise.

47. He tendered a victim impact statement which was read into evidence. In it, he stated *inter alia,* that while he had always viewed the appellant's behaviour towards him as having been inappropriate, and had said as much to his friends over the years, it was only after reading the publicity concerning the cases involving those complainants who had come forward initially that he realised that it was something more, and that it went beyond being merely inappropriate. He referenced hidden memories of being alone in the school gym and in a physiotherapy room with no windows, and then walking home and asking himself what had just happened. He stated that for years he had kept a lid on it but that thanks to the first group of complainants he now knew that something more sinister had happened.

Complainant N

48. Count no. 21 concerned offending against complainant N, who was a pupil at the college only for a short while when he was 13 years old. He recalled being bullied at the college and that one day he got very upset in class which resulted in his removal from the classroom. While outside the classroom, the appellant, who was his first-year form master arrived shortly after the

complainant's removal. The complainant said that the appellant put his arm around him and consolingly told him to go down with him to his office. While in the office, and while still upset and crying, the complainant recalled the appellant putting his arm around him and starting to rub his shoulders and back. He described how at that point the moved his hand down his back and towards his buttocks area. The complainant stated the appellant "*molested*" him at that point and had groped his buttocks outside of his trousers for a minute or two using his left hand, all the while using his right hand to move his gown or cloak out of the way so as to start touching his privates. After this assault, the complainant sat on a sofa in his office and the appellant gave him tissue paper and encourage him to take deep breaths and calm down. He said that the assault did not fully register with him owing to him being so upset about the bullying. He subsequently left the office and later returned to his classroom. He did not recall encountering a similar situation with the appellant again.

49. Complainant N tendered a victim impact statement to the sentencing court. He stated *inter alia* that he had undergone a lot of psychological therapy to help cope with some of the longer-term effects of the abuse, and that it took about two years of therapy to help deal with what had happened in his youth. He said that the appellant's offending had had an effect on his life. He stated that he was unable to clearly quantify the extent of how the appellant's offending may have impacted his education and his long-term emotional well-being, but that it did have a negative impact. The two years of therapy he underwent helped him to grapple with the difficulties of sexual abuse.

Complainant O

50. Count no. 22 on Bill 1320/2022 related to offending perpetrated against Complainant O who was then aged approximately 14/15 years. He stated that he attended the college over a six-year period, and that this period was an extremely unhappy time in his life which he locked away in terms of memory and emotional feelings and in relation to which he felt some element of embarrassment and shame. He said that it was for these reasons that he did not initially make a formal complaint to gardaí. Complainant O described how when he started at the college the appellant, for whatever reason, took a serious dislike to him. He stated that this dislike manifested as "*psychological abuse*", and that arising from his negative schooling experience he turned to alcohol, prescription drugs and narcotics, and that he suffers from long-term chronic distress and tension-related headaches, all of which he said stems from *inter alia* the psychological abuse at the hands of the appellant.

51. The incident the subject matter of count no. 22 occurred in the context of a groin strain sustained when playing sports. Having presented to the appellant in the first aid room of the college gymnasium, a similar experience to what other complainants endured ensued whereby the appellant told complainant O to strip down and he proceeded to touch the complainant's genitals under the false pretence of massaging the affected or injured area. He stated that he felt uncomfortable, but in circumstances where the appellant was the manager of a senior sports team at the college, and had a heavy influence on any future sporting career in the school, he did not protest.

52. He said that his experiences at the college, including the incident the subject matter of count no. 22, significantly affected his view on the world; that he does not have a friends network;

that he keeps most people at a distance and struggles to discuss things emotionally; and that coming to terms with what occurred at the college has triggered the medical conditions alluded to previously, and has caused the complainant to feel extremely anxious.

Complainant P

53. The appellant's offending against complainant P was the subject of count nos. 23 to 28, inclusive. It should be restated that the appellant entered a guilty plea on count nos. 23 and 28, but that this was entered on a full-facts basis. Complainant P was aged approximately 13 to 15 years old.

54. He recalled an incident which took place in the course of his second year of secondary schooling. He described how one day he was in the schoolyard on break when he was approached by the appellant who requested to see him after school in relation to "*a serious incident*". Complainant P recalled not knowing at the time what this serious incident was. Some time after school had finished for the day, and when there was nobody else in the school, Complainant P went to the appellant's office whereupon he was informed by the appellant that he had been bullying others, which revelation came as a shock to him. The appellant told him that he could not let him "*go unpunished*", and he offered the complainant the choice of informing his parents of the purported bullying or of receiving corporal punishment. The complainant opted for the latter, and he subsequently recalled the appellant smacking his rear. He described how he remembered this smacking comprising more rubbing and patting than actual slapping, which he thought at the time was maybe the appellant taking pity on him. He could not recall the length of duration of this incident but said that it felt like it lasted for "*an age*". He remembered that he was warned that should he go looking for his accuser, that he would be in worse trouble and that the appellant would go to his parents. Shaking and crying, complainant P recalled the appellant had attempted to console him but that this attempt, which initially comprised hugging, developed to include nuzzling by the appellant of the complainant's neck and cheek, the rubbing of the complainant's back, backside, and neck, and further developed to include the kissing of the complainant's neck.

55. A further incident was also described by Complainant P, which incident occurred in the course of a sporting injury to his left nipple. The appellant arranged for him to go to the school's treatment room where he asked the complainant to remove his top. Under the pretence of examining the complainant's injury, the appellant proceeded to touch the unaffected side of the complainant's chest. The complainant recalled that there was no need to touch his right side, but that the appellant had, what the complainant described as, a "*good feel*", which lasted a couple of minutes. He remembered the appellant taking a long time between this touching and the changing of the injury's dressing, which he regarded as "*unusual*". More appointments were scheduled by the appellant that week, and on each occasion the same event transpired. At all times in the course of these appointments, it was just the appellant and Complainant P in the treatment room.

56. Another incident was described as occurring in the context of a sporting injury, this time a hamstring injury. The complainant, who was in his fourth year of secondary schooling at this remove, recalled the appellant arranging to meet him in the treatment room. Similarly to experiences described by some of the preceding complainants, there the complainant was asked to remove his trousers and underwear, and the appellant then proceeded to rub up the complainant's thigh. He then proceeded to rub both sides of the complainant's backside, notwithstanding that the

injury he had sustained was confined to one leg. He recalled a teacher coming into the room, but that nothing was said. Later that week, more "*treatment*" of the injury was arranged by the appellant, and the same thing happened again.

57. The impact of the appellant's offending was described by Complainant P. He spoke of drinking an awful lot which resulted in the loss of employment. He attributed this lifestyle to *inter alia* his experiences with the appellant. He said that to-date he still "*freeze[s]*" in conflict situations, and that he struggles to sleep properly. He tendered a victim impact statement which referred to the expense at which his parents had sent him to the college in the hope of their son attaining a good education and a good start in life but that the appellant's actions had robbed him of same. He said that he dodged school as much as he could, that he never settled, and that he found it difficult to focus on his studies. He said that the appellant's offending impacted on his relationship with his parents, inasmuch as he still finds himself to this day lying to his mother about his school experience. He said that the appellant had isolated him from his friends in school, and that this made his time at the college very lonely. He said that the only solace he had was in playing sport, but the appellant "*destroyed*" this for him too; he said that the appellant used sport "*to demean, debase, diminish and destroy self-confidence of a young person, turning them into something that they felt was worthless*". He said that while in school he developed a nervous tic and that his stress triggered obsessive compulsive disorder (OCD). He said that he never played a particular sport again (which he played at the college), and he stated that by the time he left school, notwithstanding the healthy lifestyle and attitude he had adhered to originally, he was smoking, drinking and mis-using drugs. He said that this trend of self-destruction and self-soothing persisted deep into his adulthood which impacted upon his employment and further education. He had sought professional help while in the college, but never followed through with counselling and medication. He had bouts of depression for many years and recently started receiving medical help in relation to it. He said that the lifting of the "*fog of depression*" has made it clear that the way in which he deals with conflict is directly informed by the appellant's misconduct towards him when he was a child; stating that his ability to accept praise and love is diminished as a consequence of the appellant's offending. Complainant P said that the effect of the appellant's offending is felt by his family; he said that he has transferred the stress in him to his wife and kids and that this had for a time caused a concern for the strength of his continued marriage. He said that he had to work extra hard to try and repair these relationships and to not allow his past to affect his family's future.

Complainant Q

58. The appellant's offending against Complainant Q was the subject of count no. 29. When aged approximately 13 years, Complainant Q was sent to the appellant's office after committing a misdemeanour in class, which was said to have involved the throwing of a "*banger*" (a type of firework) at a wall causing it to go off beside another student. The appellant spoke with the complainant about being suspended, and at the mention of suspension the complainant began to cry. He recalled the appellant rising from his desk and walking around to him, where the appellant then put both arms around him and placed his right hand just above his buttocks, the left hand was placed in the middle of his back. He recalled the appellant pulling him closer and very tight. Recognising that something was wrong, and being physically proximate to the appellant's person,

he recalled feeling that the appellant was aroused. He said that at the feel of this he attempted pull himself away, but that the appellant tried to pull him closer again. He recalled how he managed to break free of this unsolicited embrace by pushing his arms out. He said that at that point the appellant "*went straight back to teacher mode as if nothing had happened*". He remembered that after this incident he felt very awkward and uneasy around the appellant, and he described feeling "*creeped out by him*" and that the appellant was "*very stand offish*" with him afterwards.

Complainant R

59. The offending against Complainant R was the subject of count nos. 30 to 33, inclusive. It should be restated that the appellant had entered a guilty plea on count no. 30, but that this plea was entered on an agreed full-facts basis.

60. The complainant recalled the appellant teaching him while he was in fourth year, and that in the course of his studies he wrote an essay which the appellant had corrected, and which contained use of a particular word. He was asked to go to the appellant's office as he was informed that this particular word had "*sexual connotation*", and there the use of this word was brought up. He recalled the appellant taking a pornographic magazine from his cabinet and, in reference to the particular word, the appellant told the complainant that he had seized the magazine from another student. The appellant then proceeded to ask the complainant questions regarding whether he had a girlfriend or if he knew any other pupils who may have been gay or had had sex. The complainant recalled having approximately six meetings with the appellant in his office and that the conversations which took place were quite explicit in substance. He recalled that it was just him and the appellant at these meetings.

61. He later recalled playing sports against another school and that the appellant had berated him for missing certain opportunities in the course of play. He described this beratement to be strange and targeted, noting that this had not happened before. He remembered that a few days after this, the appellant had apologised to him, put his arms around him, and told him that he would need to go to his office to discuss how to improve his sporting performance. Following this, he recalled drills taking place during a break from school, that these would take place after the general training sessions, and that another pupil would be present. He recalled the appellant telling him that he needed to be punished for certain underperformance in respect of his playing of the particular sport and that he would hit him on the buttocks with a ruler. He was asked to attend at the appellant's office for this purpose, and there the appellant struck him on his behind with a number of rulers arranged like a fan, and that these strikes hit with such force as to cause a sting. He stated that the appellant would hit him between five and ten times and that this went on once a week over the space of approximately a month.

62. He recalled that at a later meeting during this period, the appellant said to him that he, that is the complainant, "*deserved the right to punish him*", and in this regard, invited the complainant to hit him with the rulers. The complainant recalled in detail how the appellant exposed himself to the him, andhow he appellant had asked him to hit him harder. The complainant recalled that when the appellant got up, he could see that the appellant was aroused. The complainant was clear that there was never any touching of the other's privates; however, a

separate incident was described which involved the appellant touching his own testicles in front of the complainant.

63. Complainant R spoke of how the appellant exercised "*so much control*" over him and that he was terrified of him. He said that this power over him was such that he felt he had to do what he did. He described how once he told the appellant that he was not comfortable and that he wanted it to stop, the appellant subsequently exhibited a certain coldness towards him.

Complainant S

64. Count nos. 34 to 41, inclusive, concern offending against Complainant S. It should be stated that the appellant entered a guilty plea on count nos. 34 and 41, but that this plea was entered on an agreed full-facts basis.

65. Complainant S, like many of the other complainants, played sport for the college. He recalled on one occasion being told that he had to get a gum shield and he described how it was common knowledge that the appellant would do the moulding for the gum shield. In this context, he arranged to go to the appellant for the fitting of a gum shield, and he recalled this occurring when he was in sixth class (approximately 12 years of age) and when he was attending the local junior school. He recalled going to the gymnasium in the college, and there entering something of a storage room for gym equipment. He described how he sat in a chair while the appellant put the mould into his mouth to form the gum shield. He recalled how while the gum shield was being fitted, the appellant rubbed his genital area off of his hands which were on the seat's armrests. He described how he quickly moved his hand at this and how the appellant then proceeded to do the same thing but to the other hand on the other side. He stated that this second contact lasted longer but that he did not flinch that time. He stated that the appellant did not acknowledge what had happened and that he continued to make general conversation.

66. At a later remove, and while still in sixth class in the junior school, the complainant recalled sustaining an injury during a sporting match. On the sideline, he recalled being approached by the appellant who proceeded to examine his ankle. He described how there were other people around the sports pitch but that they were not proximate to the appellant and his location. He recalled how the appellant rolled down his sock and then proceeded to rub his hand up his shorts where he touched the complainant's privates. He described how at the time he questioned as to why the appellant had to go under his shorts to examine an ankle injury.

67. When he started at the college, he recalled he stopped playing sport competitively for the school, which he attributed to his awareness of the appellant's role in the treatment of injuries and not wanting to be near the man. Nevertheless, the complainant would come into contact with the appellant in another capacity. He recalled how within the first month of his secondary schooling at the college he was sent to the appellant's office after he had gotten into trouble, and that the appellant had told him off which caused him to cry. The appellant then rubbed the complainant's back while stood behind him, and the complainant recalled hearing a noise by which he was convinced that the appellant was masturbating but that he did not look behind to check. The complainant recalled the appellant moving his right arm down the complainant's legs and placed his hands on the boy's genitals, which the appellant then proceeded to "*fondle*". In the course of this assault, the appellant sought to reassure the complainant, telling him that "*everything will be okay*".

68. He recalled approximately five more similar such incidents occurring. In the case of the latter three incidents, the appellant's hand moved down the complainant's back down towards his buttocks area. On one such particular occasion, he recalled the appellant telling him to open his belt as he could not get his hand in. He stated that upon opening his belt, the appellant proceeded to put his hand down the front of his trousers between his trousers and his underwear; and he then proceeded to move his hand inside the complainant's underwear and on to his backside. The appellant attempted to masturbate the complainant but was impeded in this regard by the complainant's trousers. The complainant recalled being asked whether he "*liked it*", but that he was terrified and did not say anything at all in reply. He recalled at the close of the incident, the appellant unlocked the door to the office. He did not recall the door being locked at the start of the incident.

69. The complainant recalled how he began to miss school for fear of being sent to the appellant's office. He recalled that at some time later in his first year at the college, he was standing outside a classroom after having been caught misbehaving when the appellant saw him and sent him to the office once again. Events transpired in a similar fashion to the foregoing, inasmuch as it initially started with the appellant giving out to the complainant until he was made to cry, but on this occasion the appellant then approached the complainant and instructed him to open belt and pull down his trousers. The appellant then proceeded to pull down the complainant's underwear and masturbated him.

70. He stated that he was told on one further occasion to go to the appellant's office, which occasion would have transpired towards the end of his first year at the college. Rather than complying with this command, the complainant instead left the school, abandoning his belongings, and went home. At that point it was agreed with his parents that he would move school, though at that stage he still had not disclosed what the appellant had perpetrated.

71. He tendered a poignant victim impact statement in which he said *inter alia*:

> "[...] *For the past 34 years I have tried my hardest to forgot* (sic) *and to suppress what the* [appellant] *did to me. The fear and pure terror he inflicted upon me, the embarrassment and shame he made me feel. I had turned to alcohol and narcotics by the age of 13 years. I would spend the proceeding 12 years in this state. During this time I would alienate my family and friend* (sic) *as I would borrow money from them and never pay it back. I would on some occasions steal from my father and my brothers in order to feed my habit. I would lose several jobs in this time due to my drinking and the depression I suffered which had an adverse effect on my mental health and my ability to live a normal life. I suffered from one constant nightmare; a black dog roaming the corridors of* [named] *College chasing me. No matter how I tried I could not run away from it. This ongoing nightmare coupled with -- with flashbacks of the abuse and the sense of dread and disgust was my constant companion*
>
> *The defendant's abuse has had a profound and long-lasting effect on me. It wasn't until my mid 20s that I was able to turn my life around after meeting my now wife and being the first person I was able to speak to about the abuse* [...]

[...]

The defendant has destroyed my life and indeed many other boys' lives. He denied me my childhood and has forever changed me. There's not a single day goes by that I'm not preoccupied with this. I suffer from nightmares that I thought were long gone. I cry about this alone in my car so my wife nor children have to see me. I feel ashamed and helpless. I wish it never happened. [...]".

Complainant T

72. Count nos. 42 to 49 inclusive concern offending by the appellant against Complainant T. These counts are counts of sexual assault contrary to section 2 of the Criminal Law (Rape) (Amendment) Act 1990. The appellant entered a guilty plea on count nos. 42 and 49, but this was entered on an agreed full-facts basis.

73. Shortly after starting at the college at the age of 12 years, the complainant was called to the appellant's office for some reason which he could not recall. Regardless of why he attended there, he remembered being seated in a chair in the office and the appellant getting up from his desk and proceeding to lock the office door. He then recalled the appellant coming back and then proceeding to "*molest*" him and that he would all the while make an attempt at general conversation. This episode of molestation was said to have involved the placement by the appellant of his hands down the complainant's shirt to massage his shoulder, at which contact the complainant stated that he froze. In the course of this episode, he recalled the appellant touching himself. The complainant remembered feeling the appellant's chest and described how the appellant positioned himself such as to gain more access to the complainant's trousers and inside the complainant's underwear where he then proceeded to "*fondle*" the complainant's penis. He could not recall how long this episode lasted, but he stated that it felt like "*a lifetime*". He recalled at the end of this ordeal, the appellant stating that he "*would keep an eye on him*".

74. Complainant T had further interactions with the appellant subsequently, as a consequence of his playing of sports at the college. He recalled five incidents that happened in his first year at the college, all occurring in the appellant's office, and described them as occurring every couple of weeks. Each episode was virtually identical in terms of what occurred, with events transpiring in a similar manner as described in para. 73 above. On one such occasion, he recalled the appellant telling him "*Don't turn your head and don't look behind*". On one occasion, towards the end of the complainant's first year, he recalled the appellant digitally penetrating his anus, which he described as being done quite forcefully and as marking a departure from the appellant's misconduct on the previous four occasions. Complainant T's recollection was that all the incidents would have lasted approximately 10 minutes.

75. In his second year at the college, he recalled two incidents happening in the course of the first term of the school year. The first incident transpired in the same exact pattern as before; however, the second incident involved the appellant locking the door to the office and trying to take the complainant's hand and place it on his, i.e. the appellant's, penis, which he had exposed to the complainant. The complainant pulled his hands away. He recalled this being the end of any incidents that occurred with the appellant. He subsequently recalled being relegated from the college's primary sports team to its secondary one, which he attributed to the appellant's

dominance in the college's sports programme. He further recalled on a later occasion, when in fifth year and deciding on his subjects, that upon learning that the appellant was to teach a particular subject, he got up and walked out of the school and never returned again. He stated that he could not handle being in a class with "*a paedophile and a hypocrite*".

Complainant U

76. The appellant's offending in relation to Complainant U and Complainant V are encapsulated in counts contained under Bill No. 1581/2022. The appellant had indicated his wish to come forward on a signed plea in relation to these matters, and he affirmed those pleas on the first date that the matter was before the District Court. Count no. 1 (charge sheet no. 24112617) is a count of indecent assault and relates to offending against complainant V, and count nos. 2 to 4 (charge sheet nos. 24112796, 24112852, and 24112958) are also counts of indecent assault and relate to offending against complainant U.

77. Complainant U recalled the appellant being his first-year form master when he started at the college, and he also recalled the appellant being a sports coach. Early into his first year at the college, he recalled being called out of class by the appellant who subsequently brought him to his office. There the appellant spoke with him about sports and "*how he could have a promising* [sporting] *career*". Complainant U recalled being keen to make a good impression on the appellant on account of the appellant's dominance in the a particular school sports programme. The topic of conversation turned to health and fitness, and then to smoking. The appellant asked the complainant if he smoked, and the complainant, being honest, stated that he sometimes did. The appellant then stated that the complainant would have to be disciplined for this. The complainant recalled feeling shocked at this, and he felt that the conversation had switched from being pastoral to being disciplinary in nature. He recalled the appellant instructing him to come over to the back of the room. There, the appellant corporally punished the complainant on the rear exterior of his trousers, following which the appellant then began to put his arms around him. At that juncture, the appellant then began to rub the affected area with his hands. The complainant recalled the appellant trying to comfort him and saying that he would be alright. The conversation then returned to the topic of the complainant's promising sporting career, following which the complainant was instructed to return to class.

78. Complainant U recalled being somewhat bemused by this episode and told nobody what had transpired. Approximately six weeks later, a further interaction between him and the appellant occurred, again in the appellant's office. On this occasion, the conversation returned to the topic of smoking and the complainant told the appellant that he had not smoked as often as it had before. He recalled the appellant not being very happy with this, and that the appellant said that the complainant would have to be disciplined again. He recalled events transpiring much as they had before on the last occasion, but that this time he was pulled much closer to the appellant and the appellant had smacked him with greater force than he did before. He described how he felt at the time that the appellant was really trying to hurt him, and he stated that he could feel that the appellant was aroused through the man's trousers. The complainant was fully clothed during this second episode. The complainant recalled that at some point during the assault, the appellant was disturbed by a knock on the door. The appellant answered the door, opening it slightly, and seemed agitated by the disruption. The complainant recalled the appellant subsequently locking

the door before returning to him. He described how he found this very worrying to him as a child, and that he felt very vulnerable and had tears in his eyes. He stated that, as had happened before, the appellant attempted to comfort him, and rubbed the affected area. He stated that he did not remember much after that, but that he recalled pushing the appellant's hands away. He recalled the appellant trying three or four times, and that the man was very persistent.

79. On a subsequent occasion, the complainant was again called out of class and brought to the appellant's office. On this occasion however, he recalled telling the appellant that he had not been smoking at all, and that the appellant was angry or disappointed at this. He stated that nothing untoward occurred on this occasion.

80. In his second year, when he had turned 14 years of age, the complainant recalled encountering the appellant in circumstances of a sporting injury. The appellant advised the complainant that he needed physiotherapy and that he should come and see him, and that he would sort him out. Notwithstanding the complainant's refusal of this offer, the appellant persisted, and some time shortly after, the complainant was pulled from class by the appellant brought to the physiotherapy room. Similarly to some of the foregoing complainants' experiences, the appellant requested the removal of the complainant's trousers, and in the course of rubbing up the leg requested that the complainant remove his underwear, following which the appellant massaged his groin. Similar to some of the foregoing complainants' experiences, Complainant U recalled the appellant touching his privates under the false pretence of trying to access and massage a particular area of the boy's groin. Complainant U recalled this episode lasting a period of approximately 20 minutes to a half hour. He stated that he felt mortified and wanted to die. He recalled being unsure whether the appellant's actions were part of the physio procedure or not, which confusion was compounded by advice the appellant gave regarding ice baths which served to make what transpired feel like a physio treatment.

81. Complainant U recalled having thoughts about moving school after this incident. This he ultimately did, which move was motivated by him not being able to face going back to the college to play a sport which he knew was coached by the appellant at that school.

Complainant V

82. Count no. 1 on Bill No. 1581/2022 related to Complainant V who attended at the college between the approximate ages of 13 and 16 years.

83. The complainant's initial interactions with the appellant arose in the context of attending a swimming class. The complainant was particularly body-conscious at this age, and he recalled interacting with the appellant in the changing rooms after swimming lessons. He described that at one stage after this the appellant came into his classroom, took him out, and brought him to his office. What transpired there was that the appellant had put Complainant V up against the right-hand wall of the office, placed his right hand over the boy's mouth, stared at him for some time, and then made disparaging comments about the complainant's father and the area in which he was raised. The appellant told Complainant V that he did not belong in the college because of where he grew up. On another similar occasion, the appellant put the complainant up against the wall, this time with the complainant facing the wall. Complainant V recalled the appellant starting to touching the complainant's buttocks area on the outside of the complainant's trousers in an aggressive way. He recalled that as the appellant was touching his bottom, the appellant made

comments into his ear in relation to his father and again made derogatory comments about where the complainant was from. He recalled the episode lasting 5 minutes, but that he felt it lasted "*an eternity*". He described the appellant subsequently dismissing him, and that he left feeling very frightened. A further such incident of being pushed against an office wall and being subjected to verbal abuse by the appellant was described, but it was stated that on this occasion no indecent touching occurred.

Further general background matters

84. It was confirmed in cross-examination of the prosecuting Garda that offending conduct in the present case was similar to that for which he was sentenced on Bill No 159/2020.

Mitigation and Personal Circumstances of the Appellant

85. The appellant had signed pleas of guilty. This was during the Covid-19 pandemic and his actions in that regard had facilitated matters being brought forward expeditiously.

86. The appellant had made certain admissions during the course of three interviews conducted with him by An Garda Siochána. He was co-operative. He could not recall many of the victims or the specifics of most of the alleged incidents, but he did not suggest that the allegations were false. There was only one aspect to matters that he disputed during interviews, namely that he had been involved in the fitting of a gum shield in the case of complainant S. He disputed that he had ever been involved in fitting gum shields. He nevertheless pleaded guilty in respect of having abused complainant S.

87. At the time of sentencing for these offences, the appellant had 96 previous convictions for indecent assaults on students (all of whom were under the age of 18) at the school where the appellant was teaching during the relevant period, all of which were recorded in the Circuit Criminal Court arising out of the prosecutions on Bill No. 159/2020. On the 18th of February 2021 that sentencing court had imposed a variety of concurrent and consecutive sentences for these offences amounting cumulatively to a global sentence of 11 years' imprisonment with the final three years thereof suspended. At the time of his sentencing for the offences the subject matter of this appeal, the appellant was (and, as of the date of this judgment, still is) serving that global sentence. He was said to be due for release in February 2027 in respect of matters the subject of Bill No. 159/2020.

88. At the sentencing hearing a written apology on behalf of the appellant was tendered to the court below by the appellant's counsel. In that document he stated that he wished to apologise to all those whom he had abused, and he indicated that he accepted that the fault in all these cases was entirely his. He expressed deep regret and shame for the pain he had caused to the boys concerned. He further apologised to the boys' parents who had placed their sons in his care, and he acknowledged that he had abused their trust. He further apologised to the college concerned, to its community and to its staff for the damage that he had done. He expressed deep sorrow for the hurt he had caused to his own family and friends.

89. The sentencing court heard that the appellant was 78 years of age at the date of the sentencing hearing. A number of reports and testimonials were submitted on behalf of the appellant. Medical documents were tendered to the court indicating that he had a history of Addison's disease, which is a chronic condition; and also that he had had an aggressive form of

skin cancer manifesting itself in a tumour which had metastasised somewhat. Treatment for this had required cancerous tissue to be surgically excised from his head and neck in 2019, followed by very aggressive radiotherapy treatment. He is currently in remission. It is said that the risk of the appellant's cancer recurring is reducing with time but is not eliminated and he remains under medical surveillance.

90. The testimonials submitted, while not in any way condoning the appellant's offending behaviour of which the authors say they were unaware, spoke to some pro-social work and activities engaged in by the appellant over many years.

91. In a plea-in-mitigation made on his behalf, the appellant's counsel asked the court below to bear in mind that the case had attracted an awful lot of attention. He referenced the lengthy and carefully structured sentence that had already been imposed on his client in respect of similar offending. He accepted that a shocking feature of the present case was the sheer number of further victims and the ages of the victims. That having been said, he urged upon the sentencing court that an important feature of justice was mercy, and he pleaded with the court below not to unduly prolong the custodial elements of the sentence that the appellant was already serving.

Sentencing Judge's Remarks

92. The sentencing judge began by noting that the appellants' abuse of the boys under his care as a schoolteacher had taken place over a protracted period of time, and which involved 22 complainants. He observed that the appellant had abused these young boys grievously. The appellant had been in a position of trust, and he had used that position to gratify his own sexual desires. He was in a position of power with respect to the boys in question and he took advantage of that situation to behave in the way that he did. His behaviour had had long-term consequences for his victims. The sentencing judge noted that many of the boys were abused on one occasion, but that others were abused on numerous occasions. He characterised what the appellant had done as being very serious. The appellant had been determined and persistent in his offending.

93. On the mitigation side, the sentencing judge noted that the appellant had pleaded guilty. Further, he had expressed remorse. He noted that the appellant had endured significant and well-deserved public shame. The sentencing judge said that he would take into account the appellant's age and also the fact that he was presently serving other sentences with the release date of February 2027.

94. The sentencing judge decided to opt for consecutive sentencing in structuring a sentencing regime for the appellant in respect of the matters before him. He stated that if the appellant had not already received a substantial sentence in respect of offending the subject of Bill No. 159/2020, his sentence would be substantially longer. However, he was required to impose a proportionate sentence on the appellant that took into account the principle of totality and global sentencing. He reiterated his view that what the appellant had done was very, very wrong, and he expressed sympathy to the victims for what they had suffered. He noted that the appellant was aged 78 years of age and had approximately four years yet to serve in respect of the sentence imposed on Bill No. 159/2020.

95. In those circumstances the sentencing judge determined that he would impose on the appellant a further sentence in respect of all of the matters before him of four years' imprisonment to be served consecutive to the sentences imposed on Bill No. 159/2020 (which had cumulatively

amounted to 11 years of imprisonment, with the final three years of that suspended upon conditions, i.e., an effective custodial sentence of eight years). That would result in the appellant having to serve a new effective global sentence of 12 years' imprisonment for his misbehaviour.

96. The sentencing judge stated that in imposing an effective additional global sentence of four years' imprisonment consecutive to the sentence the appellant was already serving, he was doing so on the basis that the range of penalties available to him in respect of individual offences were noted to be either a maximum of five years' imprisonment, or a maximum of 10 years' imprisonment, depending on the legislative provision in force on the relevant date. He directed that it was to be four years on each count to which the appellant had pleaded guilty to be served concurrently *inter se* but consecutive to the global sentence imposed on Bill No. 159/2020.

97. The sentencing judge refused a request to suspend any portion of his sentence. He stated that it was his practice to impose a suspended sentence for a particular purpose, namely to aid rehabilitation and reform. He expressed the view that at the point at which this appellant will leave prison, he would hopefully have reformed and changed his life. He considered that there was, therefore, no point in imposing a (part) suspended sentence. He added that if he had been minded to impose a (part) suspended sentence, the sentence he would have imposed would have been somewhat longer but suspended in part.

Submissions to the Court of Appeal

Submissions on behalf of the appellant

98. It was argued that the sentencing judge had erred in a number of respects. Firstly, it was complained that he had failed to identify a headline sentence. Secondly, it was complained that the sentencing judge's adoption of a global approach created a particular difficulty because the range of individual offending behaviour was extremely wide, and the sentencing judge had been obliged to sentence in respect of each offence for the actual behaviour prosecuted. It was submitted that the inevitable conclusion was that the appellant was sentenced for general misbehaviour rather than for specific offences. That was said to be an error in principle.

99. Further, it was complained that it had been an error of principle to impose the same sentences for offences which had different maximum penalties. Four years' imprisonment was imposed on each offence regardless of whether the potential maximum was five years' imprisonment or ten years' imprisonment. This was said to represent a further error of principle.

100. A further complaint was that there was a failure to justify the use of consecutive sentencing. It was suggested that the sentencing judge had simply identified a total sentence that he felt that the appellant should have to serve (12 years' imprisonment). It was argued on behalf of the appellant that the difficulty with that is that this global sentence included offences previously dealt with by another court in respect of which the appellant had already been sentenced. Further, it was suggested that the sentencing judge seemed to be of the view that the suspended portion imposed by his colleague was unnecessary. There was a failure by the sentencing judge, it was suggested, to explain why the imposition of a consecutive sentence was necessary beyond stating it to be his view that the appellant serve a total sentence of 12 years' imprisonment. It was submitted that it was particularly important where a court was sentencing a person of advanced years to consider whether consecutive sentencing was actually required, or whether the gravity of the offending could be reflected in another way.

101. It was also complained on behalf of the appellant that there had been a failure to give sufficient weight to the personal circumstances of the appellant and to the significant mitigating factors. The failure to identify a headline sentence meant that it was impossible to know how much weight was in fact placed on the highly significant factors of early pleas of guilty and the real and meaningful expression of remorse and apology. Further, it was not possible to know what weight had been attached to the appellant's age and to his complex medical background. It was suggested that the court below should have engaged with the question of whether the imposition of a four-year custodial sentence on a 78-year-old man in poor health, who was already serving an 11-year sentence with the final three years suspended was exceptionally oppressive and unjust. It was submitted that the failure to do so was in error in principle.

102. Finally, it was suggested that the sentencing judge erred in failing to consider suspending a portion of the sentence. It was suggested that the carefully constructed and considered sentence imposed by the Circuit Criminal Court in 2021 was completely overridden by the sentence imposed by the sentencing judge on this occasion, and that this was an error in principle.

103. In light of all of the above it was argued that the sentence imposed at first instance was unduly severe in all the circumstances.

Submissions on behalf of the respondent

104. Responding to these submissions, counsel for the respondent relies upon this Court's decision in *The People (DPP) v. Davin Flynn* [2015] IECA 290 to the effect that a failure to nominate a headline sentence which was recommended best practice was not, *per se*, an error of principle. Other sentencing methodologies, such as resort to instinctive synthesis, were legitimate and permissible and the sentencing judge in this case was not in error in adopting an alternative approach. The respondent further relies upon *The People (DPP) v. Martin Reilly* [2016] IECA 43 as providing authority for the proposition that notwithstanding a failure to adhere to best practice the sentencing decision may be upheld if "*the final sentence does not appear to represent to us a deviation from what might reasonably have been expected in a case such as this*" and is "*within the sentencing judges reasonable margin of appreciation*"

105. On the failure to justify the use of consecutive sentencing, we were referred to various passages from Tom O'Malley SC's treatise, *Sentencing Law and Practice* (2nd edn, Thomson Round Hall 2006) emphasising that while the circumstances calling for consecutive sentences are often described as exceptional, they need not be highly exceptional or unique, and further as to the importance for victims of knowing that each offense perpetrated against them was being duly punished. Indeed, this Court had clarified in *The People (DPP) v. M.C.* [2021] IECA 319 that while consecutive sentencing was to be engaged in sparingly, exceptional circumstances were not required before resort could be had to it.

106. The argument made by the respondent was that if the sentencing judge in this instance had made all of his sentences concurrent with the sentences imposed on Bill No. 159/2020, and had not resorted to consecutive sentencing, the victims who had now come forward could legitimately feel aggrieved and feel that the appellant had effectively received a free ride in respect of the offending committed against them. It was implicit in the sentencing judge's remarks that this was a consideration for him. There were another 22 victims in addition to the 23 victims catered for in the earlier proceedings.

107. Counsel for the respondent submitted that it was abundantly clear from the transcript that the sentencing judge had engaged with the evidence and expressly and implicitly referenced the obvious basis for the imposition of consecutive sentences, namely the additional abuse by the appellant of 22 more boys in his care over a protracted period of time, in circumstances where he was in a position of trust and had abused that position of trust for his own sexual gratification. The evidence now before the sentencing court was of significantly greater harm having been caused by the appellant's actions than was apparent at the time that he was sentenced on Bill No. 159/2020. The total number of his victims was now almost double.

108. Moreover, the request by the appellant's counsel to the sentencing court in making his plea in mitigation not to "*unduly prolong*" his incarceration represented a realistic recognition that consecutive sentencing was a legitimate sentencing option open to the court below. There have been other cases, similar to this, where further instances of offending had come to light and the courts had considered it appropriate to resort to consecutive sentencing. The case of *The People (DPP) v. Kenneally* [2018] IECA 274 was cited as an example.

109. It was submitted that resort to global sentencing was entirely appropriate in the circumstances of this case. Where such an approach was being adopted, what was required was that the global sentence should be proportionate to the totality of the appellant's offending and that it was not strictly speaking necessary for the sentencing court to nominate individually proportionate sentences for each of the many offences encompassed by that global sentence.

110. The respondent rejected that there had been any failure to give sufficient weight to mitigating factors and to the personal circumstances of the appellant. While it was true that the failure to nominate a headline sentence rendered it impossible to ascertain precisely what discount there had been for mitigation, it could be clearly inferred from the totality of the circumstances that but for the existence of mitigating circumstances in the case, which were clearly identified, a much higher global sentence would inevitably have been imposed. It was said that the Court could infer from the appropriateness of the final sentence imposed that the very experienced sentencing judge in this case had properly taken into account mitigating factors and personal circumstances.

111. As to the failure to suspend any portion of the sentence, it was submitted on behalf of the respondent that this was a matter for the discretion of the sentencing judge. The failure of the sentencing judge on this occasion to suspend any portion of the sentence did not imply a criticism on his part of the way in which his colleague had structured her sentence in the earlier case. The sentencing judge had given cogent reasons for his unwillingness to suspend any portion of the sentence on this occasion, and that being a legitimate exercise of his discretion his decision in that regard was unassailable.

112. Counsel for the respondent rejected any suggestion that the sentence was unduly severe in all the circumstances, contending that the sentencing judge had had appropriate regard to the totality principle. The ultimate sentences imposed were said to have been proportionate and within the sentencing judge's reasonable margin of appreciation.

Court's Analysis and Decision

113. We have no hesitation in saying that if ever there was a case that called for a global sentencing approach, this was it; and the sentencing judge was not to be criticised for having approached it in that way. That having been said, some legitimate issues have been raised both as

to his methodology in doing so, and as to the appropriateness of the final sentence arrived at by him and how it was structured. However, even if there were errors in his approach, and/or structuring, this Court would not be justified in intervening unless those errors had resulted in a manifestly wrong overall or global sentence. Ultimately, the question for us is whether at the end of the day the sentencing judge's overall or global sentence may be criticised as having been unduly severe, disproportionate, and outside of the range of his legitimate margin of appreciation in sentencing.

114. The first thing that must happen is that we must consider the likely position if the appellant had been sentenced at the same time for all 45 offences to which he has now pleaded guilty. In performing this exercise we will ignore for the moment the sentence actually imposed on Bill No. 159/2020, because it was imposed for just 23 such offences.

115. As in all cases, gravity is to be assessed by reference to culpability and the harm done. The gravity of the appellant's offending conduct in regard to the 45 offences to which he has pleaded guilty requires to be considered in the first instance without reference to the appellant's advanced age and physical condition. Adjustments can then be made, if necessary, to take account of those factors.

116. In the assessment of culpability the starting point is the nature of the offending conduct itself. The evidence before the court below was to the effect that the offences involving the 23 victims for which the appellant was previously sentenced were very similar in terms of their relative gravity to the offences now also under consideration and involving an additional 22 victims.

117. As regards those 22 victims, the detailed evidence received by the court below, and reflected in the transcript, established that while there were some differences in the nature and extent of offending as between different victims, they were not substantial differences. What can be said is that the general nature of the offending could in every case be described as predatory; and otherwise be characterised as frequently including occasions of inappropriate touching, often of the victims' genitals, in the context of the purported administration of sports injury treatments; a single reported occasion of digital penetration of a victim's anus in a similar context; numerous occasions of groping in one-to-one encounters between a victim and the appellant either in the appellant's office or in school corridors; occasions of dry humping of a victim in public settings but concealed by furniture or the appellant's academic gown; unwelcome, albeit fully clothed, embraces in which the appellant's erect penis could be felt by the victim pressing against him; and the administration of spanking/corporal punishment administered to the buttock cheeks of victims (e.g., by 12-inch rulers spread out in a fan like arrangement) for supposed infractions of school discipline. Some victims were subjected to more incidents than others.

118. As regards the appellant's motivation, all of the incidents were committed for the sexual gratification of the appellant. In certain instances he was believed to have engaged in masturbatory conduct during the perpetration of his abuse. While in some instances the abuse was opportunistic, in most instances there was grooming or systemic premeditated abuse. The persistent and regular abuses perpetrated on numerous victims in the sports injury treatment context were clearly systematic. Many of the locations in which instances of abuse took place were clearly chosen to easily facilitate the perpetration of abuse. They were sometimes committed in

windowless clubhouse-type rooms, and often an abuse under the guise of purported sports treatment was performed after others had left the vicinity. On other occasions abuse was perpetrated in the appellant's private office. In many instances doors were locked, sometimes surreptitiously, to prevent victims from easily escaping. In other instances, the perpetrator positioned himself between the victim and the door. In yet other instances circumstances of dominion would have made attempts at escape or resistance impossible in any event, to the certain knowledge and satisfaction of the abuser. On some occasions, abuses were perpetrated in public places: either when others were not around, e.g. in empty classroom corridors while other staff and students were in classrooms participating in classes; alternatively, during classes that the appellant was actually teaching but in circumstances where his abuse could be obscured from view by furniture or by his academic robe.

119. In all instances the boys were very young, and they were vulnerable because of their age and immaturity. By virtue of the appellant's positions as a teacher and as a coach there was an unequal power dynamic between him and students which he cynically exploited. As a teacher and sports coach he was in a position of considerable dominion over them. Accordingly, there was massive breach of trust by the appellant *qua* his victims, and their parents who had entrusted their children's care to him. As he acknowledged in his letter of apology to the court below he let down not just the victims and their parents, but also his employers, and his own family and friends. It is clear from the testimonials that were provided that there were people who held him in high regard for very many years, and they were amongst those he betrayed. It is a tribute to their compassion, charity and loyalty that those persons, while not in any way condoning his conduct, were still willing to speak up for him to the limited extent possible, notwithstanding the extent of that betrayal. Overall, it can be said that the appellant's culpability was very high indeed.

120. As regards the harm done, it was in general very significant. It has to be accepted that there was little, if any, physical harm caused to victims. However, the poignant victim impact statements provided indicate that very significant trauma and psychological harm was caused in almost every case. The precise extent of such harm varied somewhat as between victims, as is only to be expected. For most victims, however, the residual effects of the harm caused were long-lasting and some persist to this day. Moreover, the sheer number of victims was immense. There were charges in respect of 22 separate victims on this indictment, and in respect of 23 separate victims in the counts on Bill No. 159/2020. The duration of the offending conduct was also significant. The offending was to a pattern, and it was persistent. While duration of exposure to abuse again varied somewhat from victim to victim, it is quite clear that the late junior school years of some victims and the secondary school years of most victims were entirely blighted by the effects of the abuses perpetrated by the appellant on these boys. They were characterised by fear and apprehension, worry and often feelings of (wholly unmerited) shame.

121. We do not think that there is a strong justification for significant differentiation as between the gravity of the offending on individual counts. If we were to consider the nature and quality of any individual instance of the appellant's abusive conduct on a stand-alone basis, and conveniently divide the available potential sentencing range into low, medium, and high sub ranges, individual instances would, in our assessment, likely fall into the low sub-range (perhaps towards the upper end of that range), because they involved for the most part touching only (sometimes above

clothing and sometimes in unclothed situations), they were non-penetrative (save for a single reported instance of digital penetration); and, albeit that there was lasting psychological harm, little or no physical harm was done.

122. However, it would be wrong to approach matters solely in that way. Overwhelmingly, the appellant's offending was not once off, but rather was repetitive *qua* individual victims and, as has been stated already, highly predatory, and abusive of his position and of the trust reposed in him. Moreover, his cumulative repeat offending in the case of individual victims greatly increased the harm done, and the apprehension, trauma and fear experienced by them. These features represented significant overarching aggravation and they require to be added into the mix. Taking all of these matters into account, individual instances of offending in fact merit a starting point in the mid sub-range of terms of potential penalty.

123. The position is complicated by virtue of the existence of different potential maximum sentences for the same type of offending, depending on when it was committed. For cases where the potential maximum was 5 years' imprisonment (or 60 months), the mid-range would be from 1 year and 8 months (or 20 months) to 3 years and 4 months (or 40 months); with the exact mid-point being at 2.5 years (or 30 months). For cases where the potential maximum was 10 years' imprisonment (or 120 months), the mid-range would be from 3 years and 4 months (or 40 months) to 6 years and 8 months (or 80 months); with the exact mid-point being at 5 years (or 60 months). Every judge would have a margin of appreciation in regard to that, but for illustrative purposes let us assume that a headline sentence of 2.5 years (or 30 months) was determined upon for the purposes of those offences attracting a maximum potential penalty of 5 years, and that a headline sentence of 5 years (or 60 months) was determined upon for the purposes of those offences attracting a maximum potential penalty of 10 years.

124. Our consideration thus far has yet to factor in the further majorly aggravating feature that there was offending against 45 discrete victims. We consider that the optimum way in which to cater for this, in the absence of a specific gauge offence, is to determine a proportionate global headline sentence appropriate to the totality of the offending by the appellant, then apply a discount for overall mitigation; then by resorting to a combination of concurrency and consecutivity to structure a regime of sentences applicable to individual offences (incorporating pro-rata discounts in each case to that applied overall) to arrive an aggregate or cumulative total equivalent to the proportionate post-mitigation global figure that had been determined as being appropriate.

125. In our view, the proportionate global headline sentence appropriate to the totality of the offending by this appellant, involving 45 individual victims, would have to be in the range between 14 and 16 years, again allowing for a margin of appreciation. The proportionate global headline sentence appropriate to the totality of the offending by the appellant, where there were just 23 individual victims, would have been less and in the range between 10 and 12 years. It should be noted that, consistent with this view, the global pre-mitigation sentence imposed on Bill No. 159/2020 was 11 years before suspension of the final three years to reflect mitigation.

126. The principal mitigating factors available to the appellant, ignoring for the moment age and health, are the fact that he entered pleas of guilty at the very earliest opportunity once these matters came to light, some co-operation in the form of admissions, his remorse and expression of

apology, and some pro-social activities in his previous life about which positive testimonials had been provided. Cumulatively, we think these would have entitled him to a discount on the headline sentence in the range between 25% and 33.3%, resulting in an ultimate sentence possibly as low as 9.25 years (i.e., 14 years discounted by 33.3%), or as high as 12 years (i.e., 16 years discounted by 25%), the precise ultimate sentence to be determined by the sentencing judge, those parameters representing his/her reasonable margin of discretion.

127. At this point then, adopting the approach commended by us in *The People (DPP) v. R.C.* [2023] IECA 33, the need to further consider this appellant's advanced age and state of health arises. These are factors that he would be entitled to have taken into account as part of his personal circumstances. In the *R.C.* case we stated at para. 92 of the judgment:

> "*Needless to say, even where advanced age features significantly and there is a need to take it into account, it may still be necessary to impose a lengthy sentence, particularly in the case of serious offending. It has been said many times, in jurisprudence from many jurisdictions, that old age in itself does not justify the imposition of what would otherwise be an unacceptably low sentence. It may unavoidably be the case that the sentence which faithful application of sentencing principles requires should be imposed upon an offender, may mean that he or she may die in prison. This could well arise where, for example, an elderly person is being sentenced for multiple serious offences, perhaps also involving multiple victims. Notwithstanding a need to bring to bear the principle of totality it may still be necessary to impose a global sentence which will have the effect that the offender may well spend the rest of their remaining life in custody. That having been said, a court should where possible, i.e., where the exigencies of the case permit of it without recourse to an unacceptably low sentence, afford a chance or opportunity to the offender that they may be released in the future. In the interests of proportionality, some reduction in the sentence that would otherwise be merited may be appropriate to avoid a crushing sentence. The offender should not, where possible, be left without hope. Even prisoners on whom life sentences are imposed do not often die in prison. Most, perhaps because the majority of persons sentenced to life imprisonment offend and are sentenced in younger life, are eventually released by the executive on licence. This is, of course, a privilege which can be revoked and not something a sentenced person is entitled to as of right. However, it is a reality. There is a risk that any sentence which, by virtue of circumstances such as the offender's advanced age and/or poor health, is likely to eliminate, or virtually eliminate, the hope of eventual release could be perceived objectively, and/or subjectively by the offender, as crushing, such that it could potentially precipitate despair. The sentencing process should endeavour to avoid this. In pursuit of ensuring proportionality in this sense, some reduction or amelioration of sentence on account of advanced age may be required. Advanced age is therefore potentially relevant to the type and length of sentence to be imposed, and the way in which any sentence is structured*".

128. We think that to adjust for the age and health factors, a further level of discounting would be required to achieve a proportionate global sentence for the totality of this appellant's offending in respect of all 45 of his victims. We have provided an indicative global sentencing range of between 9.25 years and 12 years before taking into account these factors. Adjusting for the age

and health factors, we think the ultimate proportionate global sentence for the totality of this appellant's offending in respect of all 45 of his victims could range between 8.5 years and 10.5 years, again allowing for a margin of appreciation.

129. How does the sentence of the sentencing judge at first instance measure up against this calculus? By making sentences of four years in respect of the counts relating to the additional 22 victims, consecutive to the earlier effective sentence of eight years imposed on Bill 159/2020 in respect of the offences relating to the original 23 victims, the appellant is required to serve an effective 12 years in prison. This is 18 months more than the highest figure we have postulated as being an appropriate proportionate global sentence for the totality of this appellant's offending in respect of all 45 of his victims having regard to his circumstances. This suggests likely error.

130. We therefore find that the sentencing judge erred in principle in that respect, but also in another respect. While his adoption of an instinctive synthesis approach, and failures to indicate either a headline sentence or the precise level of discounting he was engaging in, were not errors *per se,* we would venture to suggest that by not adopting the semi-structured and staged approach to sentencing that we commend, the reasons behind his decisions lack transparency and his nominated global sentence does not stand up to rigorous analysis. Even where a global sentencing approach is adopted, it is necessary that individual sentences on individual counts which are proportionate should be imposed, which when cumulatively combined, with whatever mix of concurrency and consecutivity may be appropriate, result in the appropriate global figure. No account was taken in this case of the different maximum sentences for the same offence depending on when it was committed. By treating all offences as meriting the same level of punishment, namely 4 years' imprisonment, regardless of when they were committed, it meant that there were disproportionately high sentences for some individual offences, having regard to the maximum penalty available for those offences. While this would have had no practical effect on the overall outcome in that correct sentences of the same length were made concurrent with incorrect sentences, it is not desirable that there should be disproportionate components to a global sentencing package. We would not perhaps have interfered on that account alone, but in circumstances where we believe that the ultimate global sentence was too severe, we believe we are justified in interfering. Accordingly, we are disposed to quash the sentences imposed by the court below.

131. We should say further, and for completeness, that we do not consider that the sentencing judge fell into error in refusing to suspend any portion of his global sentence. That was entirely a matter within his discretion. Further, we do not consider that the suggestion that the sentencing judge, by the way in which he structured his sentencing, undermined the careful sentencing exercise engaged in by the previous sentencing judge in respect of sentencing on Bill No. 159/2020. Circumstances had moved on by the time the sentencing judge in the present case came to sentence and he was entitled to adopt a different approach when it came to reflecting mitigation. The appellant did not lose the benefit of the previous sentencing judge having opted to suspend 3 years of an 11-year headline sentence. Rather, he was treated by the sentencing judge at first instance in the present case as having received an effective 8-year custodial sentence in his consideration of what should be the appropriate global sentence for all of the offending committed

by him. If he had nominated an appropriate global sentence having taken that approach, he could not be criticised.

132. Having quashed the sentence imposed by the sentencing judge at first instance we must now proceed to a resentencing.

Resentencing

133. Taking into account all the circumstances of the appellant's overall offending, we believe the appropriate overall global post mitigation sentence, taking into account the totality principle, should be a cumulative 10.5 years' imprisonment. As the sentence imposed on Bill No. 159/2020 is not before us, and approaching the matter on the basis that the sentence in that case represents an effective 8-year custodial sentence, the appropriate sentence in this case should be a consecutive global post-mitigation sentence of 2.5 years' imprisonment.

134. To give effect to this, the global sentence will be structured as follows. We nominate headline sentences of 2.5 years' (30 months') imprisonment for all individual indecent assault offences to which the appellant pleaded guilty and where the maximum penalty was 5 years' imprisonment (i.e., for offences committed prior to the 6th of June 1981, being the operative date. This would apply to counts no's 1, 2, 8, 11, 12 and 13 on Bill No 1320/2022); and 5 years' (60 months') imprisonment for all individual indecent assault / sexual assault offences to which the appellant pleaded guilty where the maximum penalty was 10 years' imprisonment (i.e., for offences from the 6th of June 1981 onwards, being counts no's 1 to 4 on Bill No 1581/2022 ,and counts no's 14, 15, 16, 17, 18 19, 20, 21, 22, 23, 28, 29, 30, 34, 41, 42, and 49 on Bill No 1320/2022).

135. . From these figures we will discount by 15 months in the case of the lower sentences (9 months for mitigating factors excluding age and health, and a further 6 months for the age and health factors); and by 30 months in the case of the higher sentences (18 months for mitigating factors excluding age and health, and a further 12 months for the age and health factors). Accordingly, there will be post mitigation sentences of 15 months' imprisonment in the case of the offences subject to the lower potential maximum penalty and 30 months' imprisonment in the case of the offences subject to the higher potential maximum penalty. All sentences to be served concurrently *inter se*, but consecutive to the effective eight-year custodial term imposed in respect of the offences on Bill No 159/2020.