



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2024] HCJAC 19
HCA/2024/73/XC
HCA/2024/29/XC

Lord Matthews
Lord Beckett

OPINION OF THE COURT
delivered by LORD MATTHEWS

in

Appeal against Sentence

by

MARGARET HUGHES

First Appellant

and

EILEEN IGOE

Second Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

First Appellant: Gebbie; John Pryde & Co SSC (for Hills Solicitors)

Second Appellant: Nicolson; Wilson McLeod

Respondent: McKenna, Sol. Adv; Crown Agent

7 May 2024

[1] The appellants stood trial with a co-accused on sheriff court indictment. On

13 December 2023 the jury returned verdicts of guilty on various charges of cruel and

unnatural treatment and assaults upon children in their care. On 18 January 2024, each was sentenced *in cumulo* to 3 years' imprisonment, against which they now appeal.

[2] The first appellant Margaret Hughes is now 77 and the second appellant Eileen Igoe is 79. The offences took place between 1969 and 1981 mostly at Smyllum House in Lanark, a children's home owned and operated by the Order of the Daughters of Charity of St Vincent De Paul. Eileen Igoe was a sister in the order while Margaret Hughes was a care worker.

[3] Most of the children were there because of problems at home or because they had no home and no one to look after them. The jury must have been satisfied that the appellants participated in a persistent course of conduct of inflicting excessive discipline and violent abuse upon young vulnerable children in their care.

The first appellant

[4] The charges of which the first appellant was convicted can be summarised in the following terms, using the original numbering and lettering:

(13) on various occasions between 25 November 1969 and 28 June 1974, she cruelly and unnaturally treated a child WK, then aged between 8 and 12 years old and (a) restrained him by holding him to the ground, forced soap into his mouth, (b) repeatedly struck him on the body with wooden coat hangers, (c) struck him on the head and knocked him to the ground, and (d) restrained him by the body and forced food into his mouth, all to his injury and causing him unnecessary suffering and injury to his health.

(14) on various occasions between 26 June 1969 and 3 December 1976, she cruelly and unnaturally treated a child LO, born 18 August 1962, then aged between 8 and 14 years old, and (a) struck her on the head causing her to fall onto a bed, (c) forced her hand towards a washing ringer whilst uttering threats to cause her further injury with said ringer, (d) forced her to eat food against her will, (e) seized her by the body, dragged her to the kitchen area and threw her to the floor, dragged her to the dining room area and placed additional food before her forcing her to eat it, (f) repeatedly served the same uneaten food before her at meal times, (i) repeatedly kicked her on the head and body and stamped on her head, (n) forced her into a bath of cold water and held her head under the water, (p) repeatedly uttered derogatory

and abusive comments towards her, and (q) repeatedly struck her on the head, all to her severe injury and causing her unnecessary suffering and injury to her health.

(21) on various occasions between 5 September 1970 and 3 December 1976, she assaulted FD, born 03 September 1963, then aged between 7 and 13 years old, now deceased, by seizing him by the hair and striking him on the body with her arm.

The evidence is fully set out in the sheriff's report.

[5] A witness LR spoke of a routine culture of excessive discipline of the children predominantly by slapping and hitting by "the nuns" and care workers.

[6] As far as charge 13 is concerned WK spoke principally of three incidents. He had been on a trip and, as the sheriff put it, used the Lord's name in vain. On return to the home the appellant and another put soap in his mouth. When he would not swallow the soap he was slapped and hit and sent to his dormitory.

[7] On another occasion his little brother had dropped his towel or flannel and he, the witness, went to get it. A nun was telling his brother to come to her and the witness stood between her and his brother. He told her not to shout at his brother and she slapped his brother whereupon the witness kicked the nun on the shin and punched her on the jaw. The appellant came after him and he ran into a bedroom, blocking the door with a chair. Eventually he let the appellant and another in and they repeatedly struck him on the back and shoulders with coat hangers which broke. His back was "black and blue."

[8] The third incident was when he was force fed blancmange, which he hated. He was told to eat it and said a co-accused grabbed him by the hair using a spoon to force the blancmange in. He kicked her on the shin, she then "put him on the deck" and the appellant then jumped in and held his nose to force it in, during which time he was spitting at them. He was very frank that he had been an extremely challenging child and that he would often

fight those in charge, giving evidence of playing pranks such as putting bird faeces into a nun's coffee.

[9] LO gave evidence about charge 14.

[10] She said another nun threw a brush at her at one point as a punishment but said she did not do that type of thing as much as the appellant, who, it appeared, had singled her out for mistreatment. She conceded that she had exhibited challenging behaviour and had bullied another child.

[11] When she first met the appellant on a transfer from her original house she had asked her where her brother was and the appellant slapped her on the face and told her to go to her room, which she did, crying.

[12] The appellant picked up food and pushed it into her face if she had not finished her meal. She vomited up macaroni cheese when the appellant tried to feed her with a spoon and the appellant picked it up and rammed it into her mouth, before dragging her downstairs by the hair, to tell a nun in the kitchen, who had prepared the food, that she did not like it. She cried all the way and was dragged back upstairs and another attempt was made to force feed her. She had to sit at the table when everyone else was allowed to go. The appellant used to serve her the same uneaten food at meal times. The appellant called her ugly and a bully and other names as well, as telling her that she was she was jealous and that everyone hated her.

[13] She referred to being slapped when she said another girl, the one she bullied, was being treated better than the others. She was also struck with brushes, fists and feet maybe once or twice a week for doing things like running, talking or laughing at inappropriate times. On one occasion when she was cheeky, the appellant had grabbed her hand and

threatened to put it through the wringer and actually started the wringer before stopping it. The top of her finger came into contact with it.

[14] In the most serious incident the appellant repeatedly kicked her on the head and body and stamped on her head; this was over a box of matches the witness had brought from her home after a visit there. The appellant came into her room and punched her on the face and stomach ripping her clothes. She had hold of her hair and clothes and the witness ended up falling to the floor, where the appellant kicked her once on the head and stamped on her head. The appellant told her to get into bed and left her sobbing. Her nose was bleeding and her head was badly cut on the left temple. The cut was stitched the next day by an elderly sister.

[15] On a different occasion the appellant forced her into a bath of cold water and held her head under the water for no reason. All of this treatment had caused her to suffer lifelong trauma as a result of her experiences. She had been a challenging child but she felt unloved and constantly in trouble and as though everyone hated her. She felt as if she was drowning in her time in care and did not have the tools as a child to deal with what was happening to her.

[16] FD's evidence about charge 21 was admissible hearsay under section 259 of the 1995 Act. In his statement he said that he remembered being about 12 years old, walking towards the back stairs. The appellant grabbed him by the hair and slammed her elbow into his back.

[17] The appellant denied the allegations. At most she admitted to smacking in the form of discipline which was consistent with reasonable chastisement at the time when corporal punishment was still permissible. A number of witnesses spoke in favourable terms about their time in the home and denied any physical abuse.

The second appellant

[18] The charges of which the second appellant was convicted can be summarised as follows, again using the original numbering and lettering:

(24) on various occasions between 14 September 1976 and 22 February 1981 she cruelly and unnaturally treated a child, FMS, born 20 June 1971, then aged between 1 and 9 years old, and did repeatedly force food into her mouth, seizing her by the head and holding her mouth closed until all the food was eaten, causing her unnecessary suffering and injury to her health;

(26) on various occasions between 14 September 1976 and 20 January 1977 she cruelly and unnaturally treated a child LO, born 18 August 1962, then aged 14 years old, and (a) repeatedly forced food into her mouth causing her to vomit, forced her to eat said vomit by seizing her by the head and holding her nose and mouth closed, and (b) sat on top of her body and restrained her on the ground, threw a brush at her and struck her on the head and body with a brush, causing her unnecessary suffering and injury to her health;

(27) between 14 September 1976 and 23 December 1978 she assaulted a child FD, born 3 September 1963, then aged between 13 and 15 years old, now deceased and (a) seized him by the body, struck him to the head knocking him to the ground and thereafter straddled him as he lay on the floor, all to his injury and causing him unnecessary suffering and injury to his health;

(28) on an occasion between 14 September 1976 and 18 August 1980 she assaulted PK, born 12 November 1964, then aged between 11 and 15 years old, and seized him by his clothing and the hair, pulled him and repeatedly struck him on the head and body;

(29) on an occasion between 14 September 1976 and 4 June 1980, she assaulted JM, born 1 June 1965, then aged between 11 and 15 years old, and seized him by the body and repeatedly struck his head against a door to his injury;

(30) on various occasions between 14 September 1976 and 31 January 1979 she cruelly and unnaturally treated a child, MK, born 31 December 1963, then aged between 12 and 15 years old, and (a) repeatedly struck him on the head and body, (b) repeatedly forced him to wear clothing to cover his injuries, and (e) repeatedly taunted him about his food controlled medical condition, all to his injury and causing him unnecessary suffering and injury to his health;

(31) on various occasions between 14 September 1976 and 28 June 1978 she cruelly and unnaturally treated a child, KM, born 3 November 1969, then aged between 6 and 9 years old, and (a) repeatedly seized her by the body and pulled her from a bed as she slept, pulled her across the room and forced her into a bath of cold water

and (b) uttered derogatory and abusive comments towards her, causing her unnecessary suffering and injury to her health; and

(32) between 14 September 1976 and 18 April 1978 she assaulted JM, born 2 July 1966, then aged between 10 and 11 years old, seized him by the body and pulled him out of his bed.

The evidence, so far as she is concerned, is also set out in the sheriff's report.

[19] FMS (charge 24) spoke to the appellant, known as Sister Eileen, being strict. The children had to finish their meals and they would sit at the table till they did so. She recalled times when she was fed forcibly, vomited and still had to sit and eat those meals. The appellant was strict on ensuring that she ate and would regularly force food into her mouth. She would forcefully hold her chin back and use cutlery to force the food in so that there was no option but to accept the food. The witness was held in position so she would accept the food but unfortunately she gagged on it at times and food would come back out.

[20] LO (charge 26) said that the appellant force fed her, perhaps twice, when she did not eat or finish her meal. The appellant would pick it up and put it in her mouth. If she vomited the appellant would pick the vomited food up with her hands and put it down her throat. She would hold her chin to keep her mouth shut and stop her spitting it out. She remembered also being hit, with her hand, by the appellant and spoke to the appellant throwing a brush at her and striking her on the head and body with brushes.

[21] The statement of FD (charge 27) contained an account that when he was 12 or 13 he set fire to some keps (otherwise known as caps), causing a door to begin to burn. Another child, PK, "grassed" him to the appellant so FD then ran at PK and the appellant grabbed FD and punched him on the head, knocking him to the ground where she straddled him as he lay on the floor.

[22] PK himself spoke of excessive discipline in Smyllum in general terms but also said that the nuns and staff had a hard job as the children could be disobedient and that there was a lot of fighting; it was a chaotic place. He said that the first appellant Margaret Hughes had been like a mother both to himself and his sister and he said he had continued to visit her with his sister after he left Smyllum. His sister had also spoken in glowing terms of the first appellant. As far as charge 28 was concerned, he must have been 13 and was in a social area. He was sitting too close to a younger female member of staff, perhaps with his head on her lap. The appellant came in to the room, seized him by the head and hair and dragged him into a room next door. A fight followed during which she hit him, pulled his hair and hit his legs. He conceded in cross-examination that there may have been a misunderstanding as to what the nature of his relationship was with the member of staff (who was said to be a teenager herself).

[23] JM (charge 29) said that when he was between 12 and 14 he and some other boys were playing football in a prohibited area. The appellant grabbed a hold of him by the hair and banged his head against a door six to eight times. He was upset and had a sore head but did not require medical attention.

[24] MK was one of those who gave evidence in support of the first appellant Margaret Hughes. As far as charge 30 is concerned, he said the second appellant did not like him. He remembered being punched, slapped and kicked by her more than once. He said that he had been badly bruised in the course of incidents which the jury deleted and that the appellant had made him wear clothing to cover these injuries in the summertime. The jury must have been satisfied that he had been injured but not due to these incidents but that they were also satisfied that the appellant made him cover up his bruises. He had an eating allergy and required to control his diet. He was overweight at times and the appellant used

to taunt him by referring to the other children being able to eat what they wanted and to have nice things and calling him “chubby” and “doughnut.”

[25] KM was the complainer in charge 31. She said that she was prone to wetting the bed and that on most days the appellant would drag her from her bed and along the hallway by the scruff of the neck and put her in a freezing cold bath. The appellant would call her “Clydey”, as she was dirty like the river Clyde.

[26] Lastly, in connection with charge 32, JM remembered the appellant pulling him out of bed by the hair and dragged something short of a few metres over an issue relating to missing sweets. He was 8 or 9. A number of other boys were there and they were all made to swear on the Bible and asked who had taken the sweets from the pantry.

[27] The second appellant gave evidence on her own behalf and in essence denied the charges.

[28] From the sheriff’s reports it is clear that many of the witnesses were badly affected by what happened to them and found the experience of giving evidence very difficult.

The Notes of Appeal

[29] Generally speaking what is said on behalf of each appellant mirrors the submissions made in mitigation.

[30] As far as the first appellant is concerned, she was entitled to the benefit of section 204(2) of the 1995 Act. She had no previous convictions and posed a minimum risk of reoffending. Since these offences were committed, about 50 years ago when she was a young woman in her 20s, she has led a productive, indeed an exemplary life, which had included working voluntarily at a local primary school, whose teachers had provided her with character references. The sheriff did not attach sufficient weight to the evidence of her

being a caring and supportive person to other children. She has significant health conditions, physical and mental. She has an internal defibrillator and has had an artificial valve fitted. The valve is leaking and her health can be extremely poor. She suffered a panic attack while being interviewed for the report and also did so during the trial, requiring an ambulance to be summoned. She suffers from them on a regular basis and is prescribed anti-depressants.

[31] For the second appellant, it is argued that while the jury had rejected any notion of reasonable chastisement, there was some context in the form of punishment for at least some of the offences, albeit it had gone too far. This was not just random abuse. LO accepted that she would regularly misbehave and there was an allegation of theft in the case of JM. While KM was put into a cold bath, there was conflicting evidence as to whether there would have been hot water available.

[32] It was clear from the evidence that the offending occurred when the disciplining and general treatment of children took place within the context of institutional and systemic failures to protect them. It is significantly different nowadays.

[33] There had been a considerable passage of time and during her period in custody the appellant had suffered significant stress, anxiety and shame, although it was accepted that the complainers would have suffered more and no equivalence was sought to be drawn. However, the appellant was now in her 80th year and had not offended before or since these matters, which occurred many years ago, and had spent her life in the service of others. Even if prison was deemed necessary to meet the aims of punishment and deterrence then a shorter period would have sufficed.

Analysis

[34] We do not think that much can be made of the different culture which existed in institutions at the time of these offences. We are cognisant of adages such as “spare the rod spoil the child”, the attitude to corporal punishment and the methods which were sometimes used to teach children not to waste food. However, while it may have been the norm for at least some individuals to go along with corporal punishment and teach harsh lessons about food, the jury, unsurprisingly, found that what was done went beyond reasonable chastisement. In any event, the defence in general terms was that the conduct did not occur at all. There is some force in the submission that there was a context for the violence in that many of the children had misbehaved. The answer, however, was not to engage in the behaviour which the jury found established but to treat the children with kindness and understanding of their vulnerabilities and the adverse circumstances in which, through no fault of their own, they found themselves.

[35] The sentencing exercise was not an easy one for the sheriff. The sentencing aims which were uppermost in his mind were punishment and deterrence and he cannot be faulted in that regard. He was quite correct to attach weight to the fact that the appellants were entrusted with the care of children, to the miserable time the children must have had and to the effects on them in later life.

[36] We note that the first appellant was 22 when the libels commence on charges 13 and 14 and remained under 25 for a significant proportion of the libel. She was 23 at the commencement of charge 21. On each charge she passed the age of 25 during the timeframe of the libel. She does not now fall to be considered as a young offender but recognition that young persons can be susceptible to external influence and may exercise poor judgment remain considerations of some relevance. We infer that there was a culture in place by

which she may well have been influenced and take account of it along with the whole circumstances.

[37] We also note what the sheriff learned of the first appellant's health. She had significant heart and kidney issues and has limited mobility. She suffered regular panic attacks as witnessed by the reporting social worker. She suffers suicidal feelings and in the community was prescribed anti-depressants, sleeping tablets and diazepam under the care of a psychiatrist and a mental health nurse.

[38] The second appellant suffers from arthritis which restricts her mobility. Despite this, she does her best to offer support to a sister who has dementia and a brother who has suffered a stroke, having helped him to bring up his daughter after her wife died. The lengthy proceedings caused her anxiety which affected her sleep but generally her mental health is good.

[39] We are satisfied that the sheriff attached insufficient weight to the age and state of health of the appellants and the length of time which has passed, during which they have led useful and pro-social lives. They present no future risk to the public so that the important sentencing purpose of public protection does not arise. The very fact of conviction of such elderly people well over four decades past the commission of their crimes is punitive, serves to mark the community's disapproval of it and can be taken to have some generally deterrent effect.

[40] In all the circumstances, relevant sentencing aims could have been met by sentences of a different nature. While each case turns on its own facts, we note, for example, that in *Murphy v HM Advocate* 2007 SCCR 532 there was imposed in the High Court a sentence of imprisonment for 2 years on charges which disclosed worse conduct than that indulged in by the appellants, including the use of metal rods to deliver electric shocks.

[41] We agree with the sheriff that each appellant should receive the same sentence.

In respect of each appellant, had we been passing sentence at first instance we would have imposed probation with unpaid work. However, the appellants have been in custody since 18 January 2024 and we are satisfied that it is appropriate in each case simply to quash the sentence imposed in the court below and in their place substitute a sentence of imprisonment for 7 months, to run from that same date.

[42] The appeals are allowed to that extent.