

JERSEY / JUDGMENT

C -v- AG [2015] JCA 159 (29 July 2015)

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Court of Appeal 29 July 2015 Before : J. W. McNeill., Q. C., President; N. Fleming, Q. C., and; D. Perry, Q. C. C -v- The Attorney General Application for leave to appeal by against the sentence imposed by the Superior Number of the Royal Court on 11 th February, 2015 on Count 1 in the following list of charges:- First Indictment 1 count of: Rape (Count 1). 1 count of: Procuring an act of gross indecency (Count 2). 1 count of: Indecent assault (Count 3). Second Indictment 6 counts of: Making indecent photographs of children, contrary to Article 2(1)(a) of the Protection of Children (Jersey) Law (Counts 1-6). Advocate A. M. Harrison for the Appellant. R. C. P. Pedley, Esq., Crown Advocate.

JUDGMENT

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Introduction

This is the judgment of the Court. 1. On 11 th February, 2015, the Appellant, on a plea of guilty, was sentenced to life imprisonment with a minimum term of 10 years, for the offence of rape. The Appellant was sentenced to periods of 3 and 5 years on the other five counts, to run concurrently with the minimum term. From the date of conviction (19 th January 2015) the Appellant became subject to the notification requirements of the Sex Offenders (Jersey) Law 2010 (the "2010 Law") for a minimum period of 15 years to elapse before he is permitted to apply under Article 5(5) of the Law to be no longer subject to those requirements. The detailed reasons for the sentence are set out in the judgment of the Royal Court dated 18 th February 2015. 2. The Appellant applies to this court for leave to appeal against the sentence of life imprisonment. He does not seek to challenge the concurrent terms, nor does he challenge the minimum term of 10 years. The Appellant expressly accepts that a 10 year minimum sentence, or a 15 year determinate sentence, would not have been excessive having regard to the nature of the offences and the relevant aggravating and mitigating circumstances. The relevant facts 3. The Appellant accepts the following brief summary of the facts in the judgment of the Royal Court:- "6. The defendant is 55 and a native of Jersey. In or about 2004 he commenced a relationship with a new partner who had a child from a previous relationship ("the victim"). The victim was 4 at the time. The defendant and his partner lived in Jersey from 2004, but the victim lived abroad with her grandparents until 2009 when she came to live in Jersey. According to the victim, the sexual abuse of her by the defendant started when she was 4 or 5, and the Court has been informed that

there is video evidence to show that it had certainly begun by the time she was 7, because she is captured on film giving him oral sex. Between 2004 and 2009 the defendant would travel abroad with his partner and visit the victim at her grandparents' home. It appears that he and the victim would then go to a hotel where abuse would take place, sometimes over a number of days. On at least one occasion she was abused in the grandparents' home. 7. The victim's account is that the abuse started by inappropriate kissing and touching and indeed the defendant accepted that it initially involved touching the victim around her vagina and anus with his fingers, and also tickling her in the same areas with a small vibrator which he took with him. He encouraged her to touch his erect penis and took pictures and video of her naked and semi-naked. She viewed hard core pornography on the hotel television. Images and videos subsequently recovered show that by October 2006 she was performing oral sex upon him, and he would masturbate over her, ejaculating both on her stomach and in her mouth. She was 7 years old at this point. 8. A year later, video footage shows him attempting to penetrate her from a variety of positions. In a recording of 24 th October, 2007, when the victim was 8, he attempted to do so using three methods but was then heard to state:- 'No not yet, not old enough yet. Maybe next year or the year after.' 9. The abuse continued and certainly by 11 th February, 2009, there is an image showing full penetrative sex. At that point she was 9 years old and the defendant 49. The abuse continued until February 2014 when the victim disclosed the abuse to her mother. As a result of those disclosures, the victim was interviewed, the defendant arrested and a number of computer devices were recovered from him. These contained not only the indecent videos and images downloaded from the internet which formed the basis of the counts on the Second Indictment, but also some 450 images and 75 videos of the victim, which have not been charged as separate offences. The majority of these are at level 1 on the Oliver Scale, but over 40 were at level 4 and in some the victim appeared reluctant or distressed. The defendant has admitted that while he did not film all the rapes, he did film or photograph most of them. In addition he confirmed that there were other sexual assaults, not all of which were recorded. Analysis of the video and film footage shows at least six separate dates upon which rape took place, but it may well have been more. The offences in this case involve a full spectrum of sexual activity, including oral sex performed on the victim by the defendant and vice versa, mutual masturbation, digital penetration of the victim both anally and vaginally, the use of sex toys on the victim, penetrating her both anally and vaginally, with some bondage scenes where the victim was tied to a bed using her school tie before being digitally penetrated by the defendant. On another occasion there was blindfolding of the victim during the abuse. The victim was instructed on another occasion to tell the defendant that she wanted him to " Fuck her ". She masturbated herself in his presence, including digital penetration and he would also masturbate in her presence, ejaculating over her body. The victim would also view pornographic films with the defendant. 10. The grooming of the victim clearly took place over a considerable period. The defendant later gave her expensive presents, or paid her for the sexual favours which he procured from her. All of this occurred in gross breach of trust, the defendant owing the victim a special duty of care and protection, a duty to nurture her according to the standards which our community expects so that on her attaining adulthood, she would have a firm basis for making sound decisions affecting her life and the lives of those about her. It is clear that however resilient the victim may be, she will have been deeply

scarred at a psychological level by these experiences. Her childhood has been taken away from her and of course that can never be replaced." The Appellant - offending history, and reports 4. The Appellant was born on 19 th September 1959, and his previous convictions are confined to road traffic offences. However, there were three prior incidents of sexual misbehaviour referred to by the sentencing court. These events occurred between 1986 and 1995, and were all dealt with by way of Parish Hall Enquiry, and the Appellant (according to his own account) received a written caution. "11. In 1986, when aged 27, the defendant would hide behind bushes near Trinity School watching children pass. He had cut a hole in the pocket of his long coat to allow him to masturbate discreetly as he watched them. One young girl saw him so engaged, and reported the incident. The defendant apparently received psychiatric help after making admissions. 12. In 1994, two girls aged 11 and 12 complained that he was masturbating as they walked away from him along a country lane in Grouville. 13. In September 1995 there was a complaint from an 11 year old girl that the defendant had driven past her on a country lane before parking a short distance away. When she walked past, he got out of the car and followed her. In interview he said that " I didn't have any intentions to talk to her (the 11 year girl). I was just looking at her sexually-wise. " He admitted at that time that he had been visiting the area for over 2 years and had sexual fantasies about teenage girls. He said it was not confined to that part of the Island and indeed that " I have been watching children all over the Island ". He was offered and accepted psychiatric help and voluntary supervision, and the psychiatric treatment was apparently completed in July 1996." 5. As noted by the Bailiff today those cases would almost certainly have been the subject of formal charge, and indeed would have been referred up to the Royal Court by the Magistrate. 6. In the course of interviews in May 2014 some months after his arrest, the Appellant admitted to further inappropriate sexual behaviour:- "In relation to films made in Jersey the Defendant did admit to covertly filming another pre-pubescent girl who was a friend of the Victim, and was having a bath with the Victim while visiting them (August, 2010). He accepted that this was done for sexual purposes and that on another occasion he had attempted to film another young girl having a bath through the keyhole. As well as other videos taken covertly in public places of young girls, there are two from August 2010, where he is filming the Victim and another girl from behind. They are playing a computer game while he appears to expose his penis. They seem unaware of what he is doing." These incidents took place when the victim was around 11 years old. They took place shortly before December 2010, when the Appellant applied to adopt the victim. The adoption process was never completed, and the victim was briefly placed on the Child Protection Register, being taken off by the end of 2011. 7. The sentencing court received a Social Enquiry Report from the probation service, and forensic clinical psychology reports from Dr David Briggs and Dr Ruth Emsley. As noted by the Royal Court:- "There is a consensus that the defendant has minimised and from time to time sought to justify his behaviour, and that he lacks any real insight into the impact of his behaviour on the victim. Indeed, to some extent he partly blamed her for the abuse, telling the probation officer that the victim had used sex to her advantage to " get things ". There is also consensus that the defendant presents a significant risk of harm to pre-pubescent and adolescent females." 8. The Royal Court drew particular attention to the following passage in a January 2015 letter from Dr Briggs:- "Quite simply we do not know if any future treatment is likely to be effective. To reiterate, Mr C has shown capacity for great

deception. We do not know whether he is genuinely motivated to put boundaries around his future sexual behaviour. Indeed in some ways these are only questions that can be answered if further work is undertaken with him. Given the history of matters we cannot assume Mr C will find it easy to engage honestly with any therapy. Risk management in any case will not rely solely on his response to treatment. Upon his release into the community there will be a need for him to be subject to monitoring and surveillance." 9. This is consistent with the risk assessment set out in Dr Briggs' full report:- "Clearly this is not a 'no risk' case. The likelihood of Mr C reoffending, (whether or not this leads to reconviction) must be considered to be highly significant. Risk factors in his case include the following:- Mr C demonstrates attitudes supportive of abuse. Even at this point in time his narrative as to his abuse of his stepdaughter is riddled with minimisation and excuses. He is more comfortable in promoting the belief that his daughter in some ways had encouraged the abuse for her own gain. He displayed very little evidence at this assessment of true victim empathy. He presents with a distorted views about children's capacity for sexual intimacy. Mr C appears characterised by deficits in socio-affective functioning. (He finds age appropriate relationships and the emotions generated by those relationships difficult to navigate.) I query his capacity for sustained intimacy and sexual functioning with age-appropriate adults. There are traits of emotional loneliness to his presentation and of negative emotionality. I believe Mr C has the capacity for so-called 'emotional congruence' with children i.e. preference for relating to children emotionally rather than with adults. Mr C's profile, as noted above, is that of wide spread psycho-sexual dysfunction. It is not difficult to evidence that he holds offence related sexual interests and difficulties in sexual self-regulation. I question Mr C's problem solving abilities. Static risk factors of concern in this case include Mr C's earlier history of 'hands-off' offending (non-molestation type offences), him having attracted concerns of his sexual behaviour across many years, the concerns of what appears to be an enduring sexual interest in pre-adolescent and pubescent female children, and on the persistence of sexual misbehaviour despite sanction. If we consider likely risk scenarios I believe Mr C to present with a highly significant risk of repeat offending involving child abuse imagery if at liberty. There is also a risk of him indulging in voyeuristic activities, the focus of which would be young girls. He has the capacity for hands-on sexual offending to known female children, including the filming and recording of such abuse. This assessment of risk is predicated on the basis of those risk factors noted above and given that Mr C has not completed any sexual offender therapy to satisfaction. Efforts to treat him in the past were in effect redundant given his dishonesty and manipulation." 10. These views were shared by the Probation Service, and the January 2015 report for the Court addressed risk in the following terms:- "As regards risk of harm, it is clear that Mr C presents a significant risk of harm to pre-pubescent, pubescent and adolescent females. He is a very complex individual who presents with a range of sexually offending behaviours which are well entrenched and which have endured for years. I note from Dr Briggs's report that at this cluster of paraphilic behaviours is not uncommon and those individuals displaying these characteristics are described as having 'courtship disorder'. During my interviews with the defendant and from the information he provided to me for my report in terms of his 'life story', he clearly identifies himself as being a victim throughout his life. However, it is clear that he is also highly manipulative, he has groomed this child from a very

young age, he has taken advantage of her lack of attachment to her mother to sexually abuse her, he has been economical with the truth, his sexual offending persisted after sanction and treatment and he showed little insight into the impact of his sexual offending behaviour on the victim and indeed accused her of taking advantage of him. All of the above serves to make him a highly dangerous individual." Sentences of life imprisonment 11. The offence of rape carries at customary law a maximum sentence of life imprisonment - it is therefore a discretionary sentence. 12. Article 14 of the Criminal Justice (Life Sentences) (Jersey) Law 2014 (the "2014 Law") obliges the court when sentencing an offender to a discretionary life sentence to order, in relation to that offender, "a minimum period of imprisonment in respect of that offence or offences". Article 15(1) and (3) of the 2014 Law are also relevant:- "(1) The court may, under Article 14, order a minimum period of imprisonment of any length, including a period that is the whole of the offender's life. ...

- (3) In determining the length of a minimum period of imprisonment in relation to an offender, the court may take into account such matters as it thinks fit, including any of the following -
- (a) the seriousness of the offence;
 - (b) the seriousness of the combination of the offence and other offences associated with that offence; and
 - (c) any period that, before the offender was sentenced for the offence to which the minimum period of imprisonment relates, the offender spent on remand in relation to the offence." 13. As the Appellant accepts that there was a proper basis for the court to set a minimum term of 10 years, it is unnecessary to consider further this aspect of the sentence, save to note that Advocate Harrison relies on Articles 14 and 15 above, and also Article 19(5), to demonstrate that these provisions recognise and proceed on the basis that a sentence of life imprisonment can only be imposed where the sentencing court has concluded that an indeterminate sentence is necessary to protect the public from future criminal activity. 14. In deciding whether or not to impose a sentence of life imprisonment, the Royal Court referred to and relied on the decisions of the England Wales Court of Appeal in *R v Billam*

[1986] 1 WLR 349, and *R v Millberry*

[2003] 1 WLR 546, considered and applied in Jersey in *Da Graca v Attorney General*

[2006] JCA 038 . 15. In *Billam*, Lord Lane CJ emphasised the difficulty in laying down guidelines because the variable factors in rape cases are so numerous. 16. Two passages from *Millberry* are particularly relevant to the application in this case:- "23. The panel [a reference to the Sentencing Advisory Panel] also agrees with this court in *R v Billam* [1986] 1 WLR 349, 351 that a life sentence will not be "inappropriate" where the offender "has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to women for an indefinite time." "34. Before concluding our general guidance with regard to sentencing on rape and turning to the cases of the individual appellants, we would emphasise that guidelines such as we

have set out above can produce sentences which are inappropriately high or inappropriately low if sentencers merely adopt a mechanistic approach to the guidelines. It is essential that, having taken the guidelines into account, sentencers stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances. Double accounting must be avoided and can be a result of guidelines if they are applied indiscriminately. Guideline judgments are intended to assist the judge arrive at the correct sentence. They do not purport to identify the correct sentence. Doing so is the task of the trial judge." The Royal Court's reasons for the sentence of life imprisonment 17. The Royal Court's reasoning is encapsulated in paragraphs 28 - 30 of the judgment (after careful consideration of Billam , Millberry and Da Graca):- "28 When we come to consider the seriousness of this offence, we consider we are entitled to have regard to this approach reflected by paragraph 23 of the Court of Appeal's judgment in Millberry . In this case, there is no evidence that the defendant has psychopathic tendencies or any gross personality disorder, although there is evidence that he is likely, if at large, to remain a danger to adolescent and pre-pubescent girls for an indefinite time. In our view, the offending which we have set out in detail earlier in these reasons clearly establishes that the defendant has manifested perverted tendencies. There are individual deviant sexual practices

- tying up the victim by her school tie and her belt, writing on her body with lipstick, filming the offences taking place, making her watch pornographic films whilst the assaults are committed and ejaculating over a schoolgirl's body and into her mouth. One could take such deviant practices individually into account as revealing perverted tendencies, for the purposes of Millberry , but in our view the sexual activity in the round which we have described above also shows clearly such perverted tendencies. The members of this Court are drawn from a wide range of professional disciplines and have no doubt that they are reflecting the views of the community in this approach. We do not take the age of the victim into account for the narrow purpose of this analysis because if sexual intercourse with an underage girl was on its own to be reflective of perverted tendencies, then all such offenders would find themselves liable to life imprisonment on this aspect of the Millberry test. We do consider, however, we are entitled to look at the activity in the round and that in any event the judgment in Millberry provides guidance. It is not to be construed as a piece of statutory legislation. 29. This defendant has quite deliberately groomed a young girl over the period of the offences into deviant sexual practices. The evidence before us shows that she was not a willing victim, despite that grooming. We recognise that the defendant has pleaded guilty and that he has no material previous convictions. We recognise that he has written us a letter in which he expresses remorse and shame and that he was cooperative with the police during their investigation. We nonetheless consider that this offending is so serious that a sentence of life imprisonment is an appropriate sentence to impose not only having regard to the sentencing structure of R v Millberry , but also as a reflection of the present day views of this community. 30. We have of course recognised that there may be offending which is worse than the instant case. There has, for example, been no use of violence in this case, or

at least no significant use of violence. Even though there has been the grooming which we have identified, violence as an additional factor would not be impossible. There has not been much by way of sadistic behaviour, although the victim clearly did not like being blindfolded. There has been only one victim, and not many. In the view of this Court, the fact that there might be worse instances of offending does not make it wrong to impose a life sentence in relation to this offending. Indeed, we think it is the appropriate sentence." The Appellant's contentions 18. Central to the Appellant's challenge is the contention that in reaching its decision to impose a life sentence, the Royal Court erred in law by basing its reasoning on the seriousness of the offences only. The Appellant contends that the Royal Court should have taken into account not only the seriousness of the offence, but also the likelihood of reoffending and the gravity of further offending should it occur. 19. Advocate Harrison drew our attention to a number of English cases in which the appropriateness of a life sentence is discussed, cases which were not put before the Royal Court - R v Hodgson

(1968) 52 Cr. App. R 113, R v Thornett

(1979) 1 Cr. App. R. (S.) 1, R v De Havilland

(1983) 5 Cr. App. R. (S.) 109, AG's Reference No 32 of 1996 (Whittaker)

[1997] 1 Cr. App. R. (S.) 261, and R v Chapman

[2000] 1 Cr App R (S) 377 . 20. We consider we can do justice to Advocate Harrison's argument, and the effect of those decisions, by setting out the following extracts from the judgments in Hodgson and Chapman (we will refer to Whittaker later in this judgment):- Hodgson " The appellant, who is twenty-three years of age, has been convicted twice of various assaults on women, one for wounding with intent to cause grievous bodily harm and the other for assault occasioning actual bodily harm. The only question in the case is whether sentences of life imprisonment were justified. The trial judge's reasons for passing this sentence can be gathered from the transcript of the proceedings. On being given the appellant's previous record he put this question to the police officer: "It seems he specialises in attacks on women and girls," to which the officer answered: "It would appear so." In passing sentence he said: "It is difficult to know, having heard the evidence, whether you are to be regarded as a man or a monster. It is quite clear that the public, in particular women and girls, must be protected against you." When the following conditions are satisfied, a sentence of life imprisonment is in our opinion justified: (1) where the offence or offences are in themselves grave enough to require a very long sentence; (2) where it appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future; and (3) where if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence. We think that these conditions are satisfied in the present case and that they justify an indeterminate life sentence." Chapman - " In most of those cases [a reference to cases said to depart from Hodgson] there was no express departure from the criteria laid down in Hodgson, and

certainly no doubt has to our knowledge ever been cast on the authority of that decision, which was very recently reaffirmed in Attorney-General's Reference No. 32 of 1996 (Whittaker). In Attorney-General's Reference No. 34 of 1992 (Oxford), Hodgson was indeed specifically relied on as laying down principles which were described as "not in dispute". It is in our judgment plain, as the court has on occasion acknowledged, that there is an inter-relationship between the gravity of the offence before the court, the likelihood of further offending, and the gravity of further offending should such occur. The more likely it is that an offender will offend again, and the more grave such offending is likely to be if it does occur, the less emphasis the court may lay on the gravity of the original offence. There is, however, in our judgment no ground for doubting the indispensability of the first condition laid down for imposition of an indeterminate life sentence in Hodgson, reaffirmed, as we say, in the more recent Attorney-General's Reference No. 32 of 1996 (Whittaker). It moreover seems to this court to be wrong in principle to water down that condition since a sentence of life imprisonment is now the most severe sentence that the court can impose, and it is not in our judgment one which should ever be imposed unless the circumstances are such as to call for a severe sentence based on the offence which the offender has committed." 21. Based on this English case-law, Advocate Harrison contends that the Hodgson conditions are cumulative and although it is accepted and agreed that the offences in the present case are sufficiently grave that a life sentence can be justified (the first condition), the sentence cannot lawfully be imposed because it is not necessary on the basis of the likelihood of the Appellant to commit serious sexual offences in the future (the second and third conditions). 22. Advocate Harrison points to the passages in the Royal Court's reasoning where it makes it clear that the life sentence is not being imposed "on the grounds of public protection or on any grounds similar to those set out in section 225 of the Criminal Justice Act 2003"

- see paragraph 22 of the judgment. That section of the 2003 English statute creates a power to impose a sentence of life imprisonment where the defendant, aged 18 or over, has been convicted of a serious offence (as defined), and "the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences" . 23. Advocate Harrison submits, based on extracts from the expert reports, that the real risk is "hands-off" future offending, and there was insufficient evidence before the Royal Court to support a conclusion that there is a risk of further "hands-on" offending against pre-pubescent and adolescent females. He submits that the offending in this case was "context specific", and occurred because the Appellant had access to the victim and was in a position to groom her and then abuse her. He concludes that this risk of repeat offending, the risk of finding, grooming and abusing, another similar victim, can be dealt with "through the imposition of Notification and Restraining Orders"
- a reference to the provisions of the 2010 Law. He concludes that the appropriate sentence in this case is not a sentence of life imprisonment, with a minimum term of 10 years, but a determinate sentence of 15 years' imprisonment. The support for a sentence of 15 years' imprisonment is perhaps an acceptance of the Crown's submission to the Royal Court:- "This

is the worst case of sustained sexual abuse on a single victim that has ever come before the Island Courts. Were the Court to move for a determinate sentence it is submitted that the appropriate total sentence, with a view of the totality of the offending, would be 15 years' imprisonment." The Crown's contentions 24. The Crown supports the sentence on the basis that a life sentence was justified both on the basis of the seriousness of the offending, and also because of the danger the Appellant presents to the public. 25. In his written submissions, Crown Advocate Pedley appeared to contend that the Hodgson criteria did not apply in Jersey, submitting that Article 15(3) of the 2014 Law provided a statutory basis for imposing a discretionary life sentence when the case is deemed sufficiently serious. However, in the course of oral argument he accepted that there were in effect two conditions which had to be satisfied before a discretionary life sentence could be passed. First, the offender must have been convicted of a very serious offence. Second, there should be good grounds for believing that the offender may present a serious risk of harm to the public for a period which cannot be estimated at the date of the sentence. This is certainly consistent with the 2014 Law which, among other things, deals with minimum periods of imprisonment for discretionary life sentences. Part 3 (Articles 14 to

- 16) deals with fixing the minimum period of imprisonment, based on the seriousness of the offence, while Part 4 (Articles 17 to 21) deals with release on licence after the life sentence prisoner has served the minimum term. Significantly, under Article 19(5) a life sentence prisoner will only be released where the panel is satisfied that it is no longer necessary for the protection of the public that he should be detained. It follows that the structure of the Life Sentences Law reflects seriousness on the one hand and risk on the other. The Royal Court was correct, in paragraph 20 of its judgment, when it rejected the Crown's argument and held that "the 2014 Law does not introduce a new power to sentence an offender to a discretionary life sentence". 26. Crown Advocate Pedley emphasised that the Royal Court was mindful of, and took fully into account, the level of risk posed by the Appellant to society - pointing to paragraph 28 of the Royal Court's reasons (set out above), where there is specific reference to the evidence that "he is likely, if at large, to remain a danger to adolescent and pre-pubescent girls for an indefinite time". Discussion 27. There may appear to be a tension between passages in the judgment of the Royal Court, where on the one hand there is rejection of a "public protection" test and an acceptance that the sentence imposed on the Appellant must be "for what he has done, and not for what he might do" (paragraph 22), and, on the other hand, a clear emphasis on the Appellant's history of inappropriate and abusive sexual behaviour, and the fact that the expert opinion is that he "presents a significant risk of harm to pre-pubescent and adolescent females" (paragraphs 14-16). 28. The tension is more apparent than real, and when rejecting the "public protection" test, the Bailiff was merely addressing arguments advanced by the Crown that the English statutory regime covering dangerous offenders should apply on the Island. The Bailiff was correct to reject that submission, and then apply the overall approach set out in the case-law, here and in England. 29. It seems to us that the Court was deciding that the Appellant's offending and the uncertainty of his future behaviour fell within the test set out in paragraph 23 of

Millberry : "has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to women for an indefinite time." This is clear from paragraphs 25-27, and 32 of the judgment, noting in particular the reference to the "three dimensions" in Millberry , the third being "the level of risk posed to society". 30. This approach is consistent with the decision in Hodgson , relied on by Advocate Harrison, but also directly considered in Whittaker where, at pages 264/5 the English Court of Appeal (Criminal Division), after referring to Hodgson and to De Havilland , held (with emphasis added):- " In our judgment the learned judge was taking an unnecessarily narrow view of the circumstances in which a discretionary life sentence can be imposed. It appears to this Court that the conditions may be put under two heads. The first is that the offender should have been convicted of a very serious offence. If he (or she) has not, then there can be no question of imposing a life sentence. But the second condition is that there should be good grounds for believing that the offender may remain a serious danger to the public for a period which cannot be reliably estimated at the date of sentence. By "serious danger" the Court has in mind particularly serious offences of violence and serious offences of a sexual nature. The grounds which may found such a belief will often relate to the mental condition of the offender. So much is made plain by Wilkinson (1983) 5 Cr. App. R.(S.) 105 , in particular in the passage at 108 where Lord Lane C. J. cites the judgment of Lawton L. J. in Pither (1979) 1 Cr. App. R.(S.) 209 and continues: "It seems to us that the sentence of life imprisonment, other than for an offence where the sentence is obligatory, is really appropriate and must only be passed in the most exceptional circumstances. With a few exceptions, of which this case is not one, it is reserved, broadly speaking, as Lawton L. J. pointed out, for offenders who for one reason or another cannot be dealt with under the provisions of the Mental Health Act, yet who are in a mental state which makes them dangerous to the life or limb of members of the public. It is sometimes impossible to say when that danger will subside, and therefore an indeterminate sentence is required, so that the prisoner's progress may be mentioned by those who have him under their supervision in prison, and so that he will be kept in custody only so long as public safety may be jeopardised by his being let loose at large." It is therefore plain that evidence of an offender's mental state is often highly relevant, but the crucial question is whether on all the facts it appears that an offender is likely to represent a serious danger to the public for an indeterminate time ." 31. In Chapman , at page 385, the English Court of Appeal noted "there is an inter-relationship between the gravity of the offence before the court, the likelihood of further offending, and the gravity of further offending should it occur". The Court went on to emphasise that a sentence of life imprisonment should not be imposed "unless the circumstances are such as to call for a severe sentence based on the offence which the offender has committed". 32. We are of the clear view that the principles identified in the decisions of the English Court of Appeal in Hodgson , De Havilland , Whittaker and Chapman should apply in Jersey. A discretionary life sentence should be passed only where the offender has been convicted of a very serious offence and where there is good reason to believe that the offender may be a serious risk to the public for a period which cannot be determined at the date of sentence. On this basis the imposition of such a sentence is

consistent with the structure of the 2014 Law: the minimum term is fixed to represent the period of imprisonment necessary to reflect the seriousness of the offending (retribution and deterrence), while release is a matter for the panel created under Article 17 when the offender no longer poses a danger to the public (see Article 19(5)). To impose a discretionary life sentence where the offender does not pose a serious danger to the public would be inconsistent with the 2014 Law, and wrong in principle. 33. It is common ground that the offences committed by the Appellant were very serious, warranting a severe sentence. In our view the Royal Court did not confine its decision to pass a sentence of life imprisonment to the seriousness of the offence - see paragraphs 14, 28 and 32 of the

judgment.

It is clear that the Royal Court was accepting, and proceeding on the basis, that the Appellant, if at large, is likely "to remain a danger to adolescent and pre-pubescent females for an indefinite time". There was ample material before the Royal Court to support this conclusion. Not only does the Appellant have the capacity for further "hands-on" sexual offending, but he has been shown to be devious and manipulative. This is strikingly illustrated by the 2011 Report by Dr Briggs. Dr Briggs met the Appellant during assessments relating the Appellant's attempt to adopt his victim. The Report, produced at a time when the Appellant had been abusing his victim for several years, and was continuing to abuse her, includes the following passage:- "60. I asked Mr C how [the victim] would feel were he to groom and abuse her in any way. He told me that she would be very shocked, 'she would go to her mother, would tell her mother and would cry'. He thought she would feel very upset that a person she loved so much had done something to hurt her." 34. In a letter dated 27 th January 2015, attached as an addendum to his report dated 16 th January 2015, Dr Briggs addressed the likelihood that any future treatment could be effective in light of the 2011 report and the work then carried out, at a time when "Mr C was contact offending throughout". We have set out extracts from this letter in paragraph 9 above. We here repeat the core of Dr Briggs' opinion:- "Quite simply we do not know if any future treatment is likely to be effective. To reiterate, Mr C has shown capacity for great deception. We do not know whether he is genuinely motivated to put boundaries around his future sexual behaviour. Indeed in some ways there are only questions that can be answered if further work is undertaken with him." 35. The probation and medical reports, in 2011 and in 2014/2015, provide sufficient material to supplement the seriousness of the offences committed by the Appellant, and justify a sentence of life imprisonment. As noted above, there is no complaint about the imposition of a minimum term of 10 years, nor could there be. 36. Our overall conclusion is that the sentence of life imprisonment is not wrong in principle, and although we allow the application for leave to appeal, the appeal itself is dismissed. Authorities Sex Offenders (Jersey) Law 2010. AG-v-C

[2015] JRC 033A . Criminal Justice (Life Sentences) (Jersey) Law 2014. R v Billam [1986] 1 WLR 34.
R v Milberry

[2003] 1 WLR 546 . Da Graca v Attorney General

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