THE COURT OF APPEAL

Record No: 32CJA/2023

Edwards J.
McCarthy J.
Ní Raifeartaigh J.

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 2 OF THE CRIMINAL JUSTICE ACT 1993

Between/

THE PEOPLE (AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)

Applicant

V

JAKE BOLES

Respondent

JUDGMENT of the Court delivered by Mr. Justice Edwards on the 21st of July 2023.

Introduction

1. This is an application brought by the Director (i.e. "the applicant") pursuant to s. 2 of the Criminal Justice Act 1993 seeking a review of the sentence imposed on Mr Jake Boles (i.e. "the respondent") by the Circuit Criminal Court, it appearing to the Director that this sentence may have been unduly lenient.

2. The respondent had pleaded guilty before Trim Circuit Criminal Court to one count (being count no. 1 on the indictment) of coercive control, contrary to s. 39 of the Domestic Violence Act 2018 (i.e. "the Act of 2018"); five counts (being count nos. 2 to 6, inclusive) of assault causing harm, contrary to s. 3 of the Non-Fatal Offences Against the Person Act 1997 (i.e. "the Act of 1997"); and two counts (being count nos. 8 and 9, respectively) of criminal damage, contrary to s. 2(1) of the Criminal Damage Act 1991 (i.e. "the Act of 1991"). The indictment had also included, at count no. 7, a charge of sexual assault contrary to s. 2 of the Criminal Law (Rape) (Amendment) Act 1990. However, a *nolle prosequi* was entered in respect of this count.

3. The court below sentenced the respondent to concurrent periods of 2 years' imprisonment on each of count nos. 1 to 6 inclusive, each of which was conditionally suspended in its entirety for a period of 4 years, the relevant conditions including *inter alia* a requirement to submit to supervision by the Probation Service for a period of 2 years from the date of sentence. On

imposing sentence, the court below took into consideration the two counts of s. 2(1) criminal damage (being count nos. 8 and 9, respectively).

4. The applicant now seeks a review of those sentences, pursuant to s. 2 of the Criminal Justice Act 1993, in the belief that they were unduly lenient.

Factual Background

5. At the sentencing hearing of the 7th of October 2022, a Garda Mark Egan (otherwise "Garda Egan") gave evidence in relation to the factual background of the respondent's offending. This evidence comprised a precis of the history of the relationship between the respondent and the complainant, and the abuse that occurred in that context, which abuse formed the subject matter of the indictment.

6. Garda Egan testified that the relationship began sometime in mid-September 2017, at which time the respondent was approximately 19 years old, and the complainant was aged 17 years. The complainant described how very shortly into this relationship the respondent became emotionally abusive towards her and would refer to her as a "*tramp*" and a "*slut*". In or around November 2017, the respondent pushed the complainant out of the door of his house when she arrived with Christmas presents. It was said that on this occasion he threw a box of runners at her.

7. The relationship was said to have acrimoniously ended in January 2018, however the pair continued to socialise in similar circles and shared mutual friends. After a five-month hiatus, the pair reconciled and resumed going out in May 2018. Evidence was given that during 2018 the respondent started renting a house in a village in County Meath. However, at no point during the relationship were the two parties living together, although the complainant would sometimes stay overnight at the respondent's rented house.

8. The relationship was described by the complainant as being "*normal*" between July and October 2018. This characterisation was explained as meaning that while there was still conflict between the pair, nothing of any significance occurred. This normality was short-lived, however, because in October 2018 the respondent started to become physically abusive towards the complainant, and this continued throughout November and December 2018. The abuse initially began with the grabbing of her arm, the pinning or pushing of her down onto a bed or against a wall. The complainant also described verbal arguments the pair had, in which the respondent would threaten her and her family and would threaten to burn down the family home or damage her father's car. It was said that in the course of these arguments the respondent would cover the complainant's mouth to prevent her from calling for help.

9. There was evidence that the respondent was also emotionally manipulative towards the complainant in this period, involving the respondent threatening to commit suicide and referencing various tragedies he had experienced in his own life.

10. An incident occurring on the 18th of October 2018 while the pair were staying at a hotel in Dublin involved the respondent, in the course of an argument with the complainant, criminally damaging her mobile phone and hair straightener. This incident of criminal damage formed the subject matter of count no. 8 on the indictment.

11. On New Year's Day 2019, the respondent physically assaulted the complainant while the pair were at a friend's house. This was the subject of count no. 2 on the indictment. This assault

was described in evidence as involving the respondent ripping the complainant's dress; dragging her by her hair around the floor; putting of his hands over her mouth; violently screaming abuse in her ear, and; pushing his fist into her face causing bruising. It was further said that when they returned to his house later on, the respondent occasioned a further assault on the complainant. While this latter incident was not charged as a standalone assault, evidence of it was adduced without objection during the sentencing hearing in circumstances where it concerned misconduct that was potentially relevant (with other evidence of misconduct) to a sentencing on count no.1, namely on the charge of coercive control.

12. The court below was furnished with photographic evidence of the injuries and bruising the complainant sustained in the course of the New Year's Day 2019 assaults and throughout the course of the relationship. These photographs were taken by the complainant and showed bruising and marks across various parts of her body, ranging from parts of her face to her arms.

13. Following the events of New Year's Day 2019, the complainant recalled physical abuse then occurring on a weekly basis. The next significant incident she described involved the respondent pinning her against the wardrobe in the bedroom of his rented home. Again, this was not the subject of a specific assault charge, but it was nevertheless misconduct relevant to the coercive control count. On a further occasion, she recalled the respondent smothering her face, resulting in marks on her face and the slitting of the inside of her lip. This specific incident was the basis for count no. 3.

14. Further assaults were described. In mid-February 2019, the respondent bit her on the chin and she suffered bruising to her cheek as a consequence of him pushing his fist against her face. This specific incident was the basis for count no. 4. It was said that a similar incident occurred on the 2nd of March 2019, and this was the basis for count no. 5.

15. On the 6th of April 2019 when the complainant attempted to retrieve her belongings from the respondent's house, he refused to allow her to do so and pushed her down a flight of stairs. When she indicated that she was going to report this assault to the gardaí, the respondent replied by threatening to kill himself. Once again, this incident was not the subject of a specific assault charge, but it was nevertheless misconduct relevant to the coercive control count.

16. Another incident was described as occurring on the 13th of April 2019 on which date the respondent was said to have been verbally and physically abusive towards the complainant while the pair were on a night out in Dublin. When they returned to the complainant's home, the respondent smashed a mirror in the bedroom she was occupying, and the following morning he proceeded to ransack her room, verbally abuse her, and physically assault her by pushing her head against the bed and slamming it against the bed-board. This specific incident formed the basis for count no. 6 on the indictment.

17. It was clarified that while the counts of assault on the indictment related to specific incidents which the complainant described as having occurred, her description of the respondent's misbehaviour towards her was said to have been "*pervasive*" throughout the period from the 1st of January 2019 up until she went to the gardaí. The entirety of the appellant's misbehaviour was relied on as evidence of the extent of his coercive control of the complainant.

The Garda Investigation

18. On the 15th of April 2019, the complainant made a formal complaint to gardaí regarding the respondent's criminal misconduct.

19. On the 17th of March 2021, the respondent was arrested by arrangement and sometime thereafter he was interviewed in the company of his solicitor by gardaí. Garda Egan testified that the respondent had denied the complainant's allegations when they were put to him. However, it was accepted by Garda Egan that once charges were brought forward, the respondent made clear at an early stage his intention to enter guilty pleas (which he duly did). **Victim Impact Statement**

20. A very detailed and poignant Victim Impact Statement was read to the sentencing court by the complainant personally. Although we have taken full account of it, we do not propose to reproduce it in full, and it will suffice for the purposes of this judgment to summarise key aspects of it.

21. The complainant described how the abuse she suffered at the respondent's hands has left her afflicted with numerous mental health issues including anxiety, depression, and PTSD. She further stated that it has given rise to trust issues and a loss of sense of safety, which have caused her to struggle to build relationships. She said that she lost some of the most vital years of her life with her friends and family, and she believed that she will never return to being the confident girl she once was, describing the shame and embarrassment she feels in social situations.

22. The complainant described how she is always looking over her shoulder, not knowing whether the respondent will appear. She attested to the control he exerted over her, how he kept her a "*prisoner*" (her characterisation) in her own life, and isolated her from family and friends (even going so far as to use her phone and pretend to be her in text correspondence). She spoke of how he would manipulate her by threatening to commit suicide; of his victim-blaming; of his cheating on her when she did not conform to his demands, and; of his physical and verbal abuse. She expressed difficulty in putting into words what it was like for

> "*someone to spit in your face, beat you and suffocate you until you pass out, to control you down to what underwear you have on, how much money you have in your account, whether you can stay or go, take control of every aspect of my life.*"

23. She stressed that she had wanted to leave the relationship, and that she felt suicidal. She described how difficult it was to leave the relationship, which difficulty was on account of numerous factors ranging from her age and vulnerability, the threats he would make in respect of her family and property, and his threats to commit suicide. He would also tell her that no one would believe her should she report the abuse, and the complainant recalled how he would self-harm and would claim that the injuries he self-sustained were her fault. The complainant described how she would lie to friends as to the cause of the bruises and marks on her body, covering up what was actually happening in the relationship, and to this end would avoid friends and family so that they would not see her injuries. She further stated that the respondent would control her every move by forcing her to have her location on her mobile phone at all times, so that he could monitor where she was, and that any deviation from a particular course of travel would result in an immediate call from him.

24. The complainant stated that she has tried to move on with her life and pretend that everything was okay, but that this was not the case. She said that the respondent's misconduct has made it "*impossible*" to move on in her life as she continues to carry the weight of his offending with her. She concluded by stating: "*The cuts and bruises fade, but the psychological and emotional abuse that I endured has scarred me and will sit with me forever*".

Personal and Mitigating Circumstances of the Respondent

25. The personal and mitigating circumstances of the respondent were described to the sentencing court in the course of Garda Egan's evidence, the plea in mitigation, a probation report and in a psychological report prepared by a Dr Kevin Lambe.

26. Garda Egan confirmed in evidence that the respondent (who was born in 1998) was aged around 19 years at the time the relationship with the complainant commenced and was about 24 years of age at the date of sentencing.

27. He had no previous convictions, and he had never come to the adverse attention of gardaí prior to the events complained of.

28. Garda Egan agreed with counsel for the defence that the respondent's pleas of guilty were of "*huge value*" to the complainant inasmuch as they spared her having to relive the offences in the course of an adversarial trial. He further accepted that the pleas had assisted the prosecution generally inasmuch as they comprised an acknowledgement and an acceptance by the respondent of his behaviour within the confines of his relationship with the complainant.

29. It had further emerged in cross-examination of Garda Egan that the complainant had, since reporting the matter, obtained "*a Safety Order*" against the respondent. Although the transcript is silent as to the statutory basis for it, we presume this was under s. 6 of the Domestic Violence Act 2018. Garda Egan confirmed to the sentencing court that the respondent had adhered to the terms of this order, and further stated that he had not come to the adverse attention of gardaí in the time since the making of the complaint.

30. There was evidence from various sources that the respondent had a "*significant*" substance misuse problem involving alcohol and drugs throughout the relationship and was addicted to cocaine. This was elaborated on in both the Probation Report and in Dr Lambe's report, to which further reference will be made later in this judgment as seems appropriate. Although the sentencing court was provided with no evidence that the respondent had undertaken any specific drug treatment program or drug treatment therapy, and it was represented that he had managed through his own efforts to address his substance abuse issues in the absence of any addiction intervention, at the sentencing hearing on the 7th of October 2022 the respondent did produce drug screening urine analysis results from the Community Addiction Response Programme dated the 29th of June 2023 which were entirely negative. In advance of delivery of the Circuit Court's sentencing judgment on the 13th of January 2023, updated drug screening urine analysis results, from samples provided on the 9th of January 2023 and the 12th of January 2023 were provided to the court. These were also negative.

31. In his plea in mitigation, counsel for the respondent expressed the respondent's unreserved remorse, and regret for his misconduct. An unsent letter of apology from the respondent to the complainant was produced in the court below. It was said that there was difficulty in directly communicating the respondent's unreserved apology to the complainant at an

earlier stage in circumstances of a Safety Order being in place, an explanation which the sentencing judge was prepared to accept. Counsel urged upon the court that his client acknowledged and accepted the impact his misconduct had wrought on the complainant, and the ongoing and lasting effect it continues to have on her.

32. The sentencing court heard evidence that in the period since the offending, the respondent had obtained work in the security industry. It was stressed by counsel that while the respondent's father was a substantial shareholder (and Chief Operating Officer) in the employer company, the respondent's employment was not immediately forthcoming and depended on whether he could be "*trusted or vouched for*". It was said that his securing of employment represented the "*culmination of him making significant strides*" and demonstrating that he was an employee worthy of the role. It was said that his employer was in a position to further the respondent's education through a graduate programme whereby he could obtain a third-level qualification. The Court was furnished with a testimonial letter from the respondent's employer, written by a director of the company.

33. However, in putting forward on behalf of his client this positive circumstance of employment in the security industry, a note of caution was sounded by counsel for the respondent. It was suggested to the sentencing judge that his client possibly faced a collateral or ancillary penalty arising as a consequence of his conviction for the offences for which he faced sentencing, in that the relevant regulatory authority (the Private Security Authority or "PSA") could in his case refuse to grant, or to renew, a licence permitting the respondent to work in the private security industry if it concluded that by reason of such convictions he was not a fit and proper person to provide a security service. It was said that in the event of that coming to pass the respondent would likely lose his job. We were informed at the appeal hearing that what was apprehended has in fact occurred, and that the respondent has since lost his job as a security operative.

34. There was evidence that the respondent was in a new relationship with a partner at the time of sentencing, and they were expecting the birth of a child together. This child was born in December 2022 (i.e., between the sentencing hearing and the sentencing ruling). A letter from the respondent's partner was tendered to the sentencing court wherein she detailed that she was fully aware of the respondent's misconduct in a previous relationship but that, notwithstanding this, she was prepared to stand by him.

35. In the course of the plea in mitigation, it was said that the respondent's existence growing up was "*not ideal*", and express reference was made to the "*toxicity*" in the relationship between his two parents. It was said that at approximately 14 years of age, he moved school where he predominantly got on well and seemed set for tertiary education, however this was derailed by what was described by counsel as "*a very significant spiral of control*" which comprised the misuse of drugs and alcohol. It was said that the confluence of events, i.e. the substance misuse, his relative immaturity, and the development of a relationship with the complainant, led to the commission of his offending.

36. Counsel submitted at the sentencing hearing that the respondent had overcome his difficulties with substance and alcohol abuse. Dr Lambe's psychology report detailed that the respondent had advised that he ceased such misuse, and two letters – one by his employer and one by his new partner – both attested to same. The sentencing court, however, was concerned with what steps the respondent had taken to address his alcohol and substance misuse and with

what objective proofs were available in relation to his sobriety. The sentencing court heard evidence that the respondent has been attending a private counsellor for anger management therapy, i.e., a Dr Martin Daly who is apparently a psychotherapist. A letter from Dr Daly was handed in, which merely confirmed that the respondent had been attending him and which stated that, "*I anticipate that he will need to do so regularly for the foreseeable future*". There was no report submitted from Dr Daly. However, both the respondent's probation officer, Ms. Cliodhna Fogarty, and Dr Lambe, respectively, consulted with Dr Daly for the purpose of the preparation of their reports, who reported to them that he had been seeing the respondent from time to time since 2020. Initially there had only been limited engagement by the respondent with therapy, and this was followed by his withdrawal altogether from therapy for a period. However, the respondent had re-engaged in October 2022 and since re-engaging was demonstrating improved engagement with therapy, increased insight into his offending behaviour, and improved motivation to continue attending Dr Daly's service.

The Probation Report

37. In her report dated the 10th of January 2023, the probation officer reported that the respondent had been assessed as a moderate risk for repeating intimate partner violence. She noted that while he asserts to having addressed his significant addictions to alcohol and cocaine, he stated he had done so in the absence of any addiction intervention. He related that he was currently in a two-and-a-half-year relationship and informed the probation officer that he had applied techniques to avoid any repeated incidents. It was noted that this was said to have been achieved in the absence of a targeted intimate partner violence intervention. The respondent further related that he had sought the support of generic counselling in 2020 and had remained attending at service which he stated had provided him with insight to his behaviour and a better understanding regarding childhood adversity and trauma. Addressing these risk factors would require monitoring of the respondents engagement with a formal intimate partner violence treatment program, such as Men Overcoming Violent Emotions (MOVE), subject to his assessment of suitability and a comprehensive drug and alcohol intervention to maintain his asserted stability. The Probation Service recommended that in the event that the court wished to include a period of Probation Service supervision as part of a sentence structure that there should be a minimum period of two years of such supervision, and a number of conditions were suggested as being appropriate to attach thereto. These were that the respondent should:

- Reside at an address agreed with the Probation Service;
- inform the Probation Service of any change to his contact details;
- attend all appointments offered by the Probation Service;
- co-operate with any recommended referral to a therapeutic programme to address intimate partner violence such as Men Overcoming Violent Emotions (MOVE), or any other recommended anger management and offense focused intervention, and complete such programs if deemed suitable;
- engage with and complete any Probation Service offence and offending focused program of work;
- disclose to the Probation Service any new intimate partner relationship and cooperate with any recommended safeguarding measure;

- not obstruct any multi-agency collaboration regarding potential future victim safeguarding;
- co-operate with any Probation Service recommended drug and alcohol intervention, including required treatment, residential treatment, counselling, and drug screening, and;
- co-operate with any Probation Service recommended support to address his vocational development needs.

38. In the event, the sentencing judge in the court below, in suspending the balance of the respondent's post-mitigation sentence in its entirety, adopted the Probation Service's suggested conditions.

39. A letter from the Probation Service to the respondent dated the 30th of June 2023 was provided to us in the context of this appeal. This letter confirms that as of that date the respondent was in full compliance with the conditions of his suspended sentence. He was attending appointments and engaging in the supervision process is required. He was noted to be taking part in the Men Overcoming Violent Episodes (MOVE) group programme and that his progress had been reported by the group facilitators as being satisfactory. It was also confirmed that he had not come to the negative attention of gardaí at any point after sentencing. We have also been furnished with a letter from MOVE dated the 28th of June 2023 confirming the respondent's participation in their "*Choices*" programme.

40. It is appropriate to mention at this point that the sentencing court was also furnished with two certificates of achievement awarded to the respondent in September 2022 by the Alison organisation in respect of on-line courses completed by him, (i) in respect of Anger Management and Conflict Resolution, and (ii) in respect of Mental Health Studies – Suicide, Violent Behaviour and Substance Abuse.

Dr Kevin Lambe's Report

41. In a lengthy report dated the 27th of September 2022, Dr Kevin Lambe sets out his findings following his psychological evaluation of the respondent. Before doing so, he outlines the detailed background history that he received concerning the respondent's current situation, family of origin background, his educational history, his adolescent adjustment, his work history, his history of substance abuse, his relationship with his former partner, i.e., the complainant, his attitude to the charges, his efforts at remediation, and his current relationship with a new partner. Dr Lambe further considered the respondent's presentation and mental status, and he described psychological testing of the respondent carried out in the course of the assessment.

42. His conclusions are set forth in the Opinion section of his report, where he stated that the intergenerational transmission of trauma and violence in the males of the respondent's family had been corrupting and damaging to him. The evidence pointed to a difficult early life where from nursery he was attuned to stress and trauma in his parents, had elevated levels of the stress hormone cortisol, and had no option but to self-soothe when in distress. It seemed likely to Dr Lambe that the level of emotional, as well as physical, neglect and stress that the respondent was exposed to was toxic in nature, a factor in his developing behavioural and psychological problems as well as substance abuse issues. The research base is clear that having parents who struggle to meet even basic physical needs leads to developmental challenges from which it is difficult to emerge cognitively and socially unscathed. Dr Lambe reported that the secure base from which to

explore the social world was undeveloped for the respondent, and he struggled to amass the quality and quantity of childhood and adolescent experiences required by young adulthood to think about his place in the social world.

43. Dr Lambe went on to report that psychological testing pointed to depression, intrusive experiences, and defensive avoidance as his ways of being in relationships and in his interacting with the world. Additionally, he was often in a state of anxiety and hyperarousal. Adding alcohol and illicit drugs to the mix, as he did, during his relationship with the injured party brought together a lethal combination of variables that resulted in immense distress and hurt.

44. Dr Lambe attested that although the respondent's levels of personal distress remain high, what appears to have changed is his approach to his symptoms. He has developed self-awareness to a sufficient level to understand his need for therapy work. It was noted that, to this end, he had begun the process of counselling. While he would require directive therapy that is both challenging and responsive, perhaps most significant in Dr Lambe's opinion, was his cessation of drugs and significant reduction of alcohol. The effects of changing his substance use were immediate apparent in that he had more energy for work, the gym, his relationships and family life. The benefits were also apparent in his mood and greater reported openness in his relationships.

45. In Dr Lambe's opinion, it was essential that the respondent should remain in a counselling process at least until he has a complete understanding of psychological symptoms and the nature of distress he experiences. He noted that while the MOVE organisation is an important source of support for men overcoming violent emotion, he felt that the respondent might in fact be a step ahead in terms of his recovery. Nevertheless, he recommended that the respondent should attend their intake process as it would provide a further learning opportunity around keeping him safe in the future.

Sentencing Judge's Remarks

46. In the course of the sentencing judge's ruling, she acknowledged the factual background to the offending as set out in evidence.

47. She had regard to the contents of the complainant's victim impact statement and stated that

> "[...] *it is very moving in relation to the impact upon her from such a young age and all the things that have been taken from her and the Court takes cognisance of all of those matters in relation to the impact upon her which has been profound and serious and happening as it did at a very young age, and it has robbed her of a lot of the joys that should be part of her life in relation to this.*"

48. The court below further noted what was submitted to it in the course of the plea in mitigation, including that the respondent acknowledged his wrongdoing, had expressed remorse, had since found employment and was now a father in an new intimate relationship. The respondent's efforts at rehabilitation were noted, and the documents furnished to the court below and described earlier in this judgment, including the various reports, testimonial letters/references, certificates, and urinalysis evidence, were also expressly acknowledged by the sentencing judge.

49. The court below was cognisant that this case involved "*a very serious matter*" and noted the physically and verbally abusive and emotionally manipulative nature of the respondent's role in

his relationship with the complainant. The sentencing judge bore in mind that his offending "*traduced*" her dignity as a human being, that the offending occurred mostly in private but sometimes in public, and that it had a lasting effect on the complainant.

50. The court below was also cognisant of the respondent's history of alcohol and substance misuse and noted that it included a cocaine addiction. A significant factor was that he had not come to adverse Garda attention since the offending.

51. The sentencing judge identified the following factors as aggravating the respondent's offending:

> "*The aggravating factors in relation to this are that this was a sustained period of offending over a period of time. The first count being in October 2018 but the relationship having escalated in its nature and the period the Court is concerned with is between the 1st of January 2019 and April 2019 in particular, where it had escalated into a very dangerous and difficulty situation for the injured party. It was manipulative in its nature, it was violent in its nature, it involved threats that he would harm himself and blame her afterwards, and of course the impact upon the victim who was so young and of whom it has had such a profound impact. So those are the aggravating factors in relation to this.*"

52. The judge then specified the mitigation enuring to the respondent's benefit in sentencing:

> "*In terms of the mitigating factors, the Court has to take into account that there were early pleas of guilty in relation to this, his relative youth at the time, he comes before the Court having no previous conviction, and more importantly has not been in trouble since, and that is 2019 and that is now a number of years ago. He has attended for a considerable amount of work in relation to his anger management, he's provided clear urines, he's gone to counselling, he's making efforts, he's become a father, he has dealt with his drink and drug addictions. He has adhered to the safety order that was put in place in relation to this and he has a lot of structures in place in relation to his life at this stage in relation to this.*"

53. The sentencing judge then noted that the maximum penalty available in relation to both coercive control and assault causing harm is 5 years' imprisonment. With this in mind, the court nominated headline sentences of 3 years' imprisonment for both the coercive control offence and the assaults causing harm, and took into consideration the two counts of s. 2(1) criminal damage.

54. Placing particular emphasis on the guilty pleas and the fact that the respondent had not come to adverse Garda attention, the sentencing judge proceeded to discount 1 year from each of the headline sentences, leaving a remainder of 2 years' imprisonment to be served on each of counts nos. 1 to 6, inclusive, each sentence to run concurrently.

55. The sentencing judge's focus then turned to whether to suspend the post-mitigation sentences of 2 years. She noted the assessment of the Probation Service and the respondent's co-operation with them. She stated:

> "*The Court is of the view that in the circumstances where he is young and has done a significant amount of work since the ending of his relationship which gave rise to these counts the Court wishes to give him a chance in relation to this matter, so the Court will suspend those sentences that were imposed on counts 1, 2, 3, 4, 5, and 6 in their entirety, but they are not going to be suspended simpliciter. They're going to be suspended on very*

specific terms. In the first instance, the Court is going to suspend those sentences for a period of four years from today's date".

56. Those terms are outlined in the transcript and the rule of court, and included all of the conditions recommended by the Probation Service and previously referenced in this judgment (at para. 37 above), as well as conditions requiring:

- That he keep the peace and be of good behaviour towards all the People of Ireland for a period of 4 years from the date of sentence, and come up if called on to do so to serve the sentence imposed but suspended on him entering into the recognisance, and;
- that he not contact or go near the complainant, nor approach, watch or beset the complainant within the suspended period and that he not have any contact directly or indirectly with her.

Notice of Application for Review of Sentence

57. In her Notice of Application for a Review of Sentence pursuant to s. 2 of the Criminal Justice Act 1993 and dated the 7th of February 2023, the applicant advanced various grounds in support of her application. These grounds have been ordered with reference to the coercive control count and to the assault causing harm counts. On account of the quantity of grounds advanced, we do not purport to reproduce them in full. It suffices, under this heading, to provide a precis or distillation of these grounds to outline the essence of the applicant's complaints regarding the sentence imposed on the respondent by the Circuit Criminal Court:

I. That, in regard to the assault causing harm offences, the sentencing judge erred in attached insufficient weight to the following aggravating factors:
   - the nature and circumstances of the respondent's offending;
   - the content of the victim impact statement, and;
   - the provisions of s. 40 of the Act of 2018.

II. That, in respect of all offences, the sentencing judge attached disproportionate weight to mitigation which resulted in an excessive discount from the headline sentences, and further that she erred in effectively affording the respondent excessive or double credit for mitigation in suspending the entirety of his sentence.

III. That the sentencing judge erred in failing to attach any, or any sufficient weight, to the need to promote both specific and general deterrence.

Submissions on behalf of the Applicant

General principles applicable to undue leniency reviews

58. In the first place, it wass acknowledged by counsel for the applicant that, having regard to the dicta of McKechnie J. in *The People (DPP) v. Stronge* [2011] IECCA 79, the onus for proving undue leniency rests with the applicant, and that discharging this burden of proof requires meeting a high threshold, namely proving that the sentence imposed at first instance constituted a substantial or gross departure from what would be the appropriate sentence in the circumstances, the difference between the two being to a clear and discernible divergence from the norm, amounting to an error in principle.

Coercive control – aggravating factors and deterrence

59. In respect of the coercive control offence, counsel asked the Court to note that the text of s. 39 of the Act of 2018 does not state that actual violence is a necessary component of the

offence. In this regard, counsel submitted that where actual violence is used it may aggravate the offence, and that the degree of violence actually used by the respondent in the present case constituted a significant aggravating factor. It was further argued that the age of the complainant also aggravated the respondent's offending. While counsel for the applicant maintained that the headline sentence nominated by the sentencing judge in respect of the coercive control count was lenient, he acknowledged that it fell within the range of the sentencing judge's discretion and as such it was confirmed that the Director does not quarrel with it.

60. However, counsel submitted that the leniency of the headline sentence for the coercive control offence was "*compounded*" by the discount applied for the guilty plea and prior good character – which discount was said to effectively amount to a 33% reduction from the headline sentence. This discount was criticised by counsel who contended that while the respondent may have entered guilty pleas at an early course, this represented a change in stance as when he was initially questioned by gardaí he denied the offences and was not sent forward on signed pleas of guilty.

61. What, in counsel for the applicant's submission, truly pushed the leniency of the sentence imposed into undue leniency territory was the decision of the sentencing judge to suspend the sentence in its entirety. Counsel has argued that the gravity of this respondent's offending, notwithstanding any mitigation to which he was entitled, could only be adequately reflected in a custodial disposal. Moreover, it was argued that greater weight should have been afforded to the principle of general deterrence in the present case. Counsel observed that the offence of coercive control frequently, as it did here, occurs in private thereby rendering it difficult to detect. He submitted that this should have been factored into sentencing by the court below, and in so arguing he quoted from Ní Raifeartaigh J.'s judgment in *The People (DPP) v. Connor* [2020] IECA 255, as to the existence of a need to "*mark society's strong condemnation of such behaviour and send out a clear message of general deterrence*". Fundamentally, therefore, the error in principle alleged in respect of the sentence imposed on the coercive control count relates to the sentencing judge's imposition of a sentence that contained no actual carceral element.

Assault causing harm – aggravating factors

62. As regards the five counts of assault causing harm, it was submitted by counsel that the headline sentence of 3 years nominated on each count was unduly lenient, and that 5 years would in fact have been a more appropriate headline sentence having regard to the existence of a number of aggravating factors.

63. In the first place, it was said that greater weight should have been afforded to the degree of physical violence used by the respondent in the course of his offending. A number of the counts had involved the respondent placing his hand over the complainant's mouth, causing her to fear or apprehend suffocation, as indeed she alluded to in her victim impact statement. Specific reference in this regard was made to a decision of the Northern Irish Court of Appeal in *R. v. Campbell* [2020] NICA 25 wherein that court (Stephens L.J.) regarded strangulation as a "*substantial*" aggravating factor and noted certain characteristics of it, particularly that it is

> "*[47]* [...] *an effective and cruel way of asserting dominance and control over a person through the terrifying experience of being starved of oxygen and the very close personal contact with the victim who is rendered helpless at the mercy of the offender. The*

> *intention of the offender may be to create a shared understanding that death, should the offender so choose, is only seconds away. The act of strangulation symbolizes an abuser's power and control over the victim, most of whom are female*."

The Northern Irish Court of Appeal went on to state:

> "*[50]* [...] *We consider that the use of body force to strangle is not less heinous than the use of a weapon. We also emphasise the need to give consideration to that feature when forming a view as to future risks.*"

64. Counsel for the applicant, while accepting that the respondent's actions did not comprise actual strangulation or attempted actual strangulation, but rather the covering of the complainant's mouth to prevent her from screaming or crying out, argued, nevertheless, that because of the restriction to the complainant's breathing caused by the respondent's actions, and resulting distress caused to the complainant through apprehending suffocation, that similar considerations to those expressed by the Northern Irish Court of Appeal arise in the present case and are applicable in respect of the placement by the respondent of his hand over the complainant's mouth. This, it was submitted, ought to have been considered as a substantial aggravating feature.

65. The second aggravating factor which the applicant submitted ought to have been afforded greater weight is that of the violation of the complainant's home. It was submitted that this was an aggravating factor in respect of count no. 6 on the indictment. A third aggravating factor specified by the applicant, relates to the profound impact of the appellant's offending on his victim. It was submitted that the offending had a "*devastating impact*" on the complainant and that this was evidenced by the contents of the victim impact statement.

66. A fourth aggravating factor identified by counsel for the applicant concerned the use of violence in an intimate relationship. It was observed that it is now a statutory requirement per s. 40 of the Act of 2018 that where a court is determining the sentence to be imposed on a defendant for a relevant offence (s.3 assault is a relevant offence), the fact that the offence was committed by the defendant against a relevant person (the complainant is a relevant person) should be treated, for the purpose of determining the sentence, as an aggravating factor. Further, in that event, the court must impose a sentence which is greater than that which would have been imposed if the person against whom the offence was committed was not a relevant person. We were also referred to previous decisions of this Court (*The People (DPP) v. Sutton* [2020] IECA 280 and *The People (DPP) v. D.C.* [2022] IECA 327) in which the existence of an intimate relationship as an aggravating factor in sentencing was considered.

67. Lastly, the number of violent incidents comprising s. 3 assaults, and their frequency, was a factor which in itself, but also because it was indicative of the exercise of control over the complainant, was advanced as yet another aggravating factor in respect of which greater weight should have been afforded. Counsel observed that the respondent had pleaded guilty to five counts of assault causing harm occurring over a 3-and-a-half-month period, and that in circumstances where the sentencing judge had decided to take a global approach, as she was entitled to do, and impose concurrent sentences of equal duration on each count, the close repetition of the offences represented a significant aggravating feature that ought to have influenced the nomination of the headline sentence to be applied globally.

68. With regard to the discounting for mitigation, it was again argued that the level of discounting was too generous, and that the decision to then suspend the resultant post-mitigation sentence in its entirety was unjustified, involved, as it did, double counting of certain factors (the respondent's relative youth and his efforts at rehabilitation) which had already been referenced and taken into account, and did not pay adequate regard to the desideratum of promoting deterrence in a case such as this.

69. Finally, we should mention that the applicant directed our attention to two comparators as being of potential assistance, namely *The People (DPP) v. Maguire* [2018] IECA 71 and the *Sutton* case (previously cited).

Submissions on behalf of the Respondent

Suspended Sentence

70. Counsel for the respondent argued that the imposition of a 2-year suspended sentence was entirely appropriate given the specific circumstances of the offence and of the offender. He noted that this is particularly true where the suspension was tailored to encourage, foster and maintain the respondent's rehabilitation, and that this was manifest in the various specific and demanding conditions attaching to the suspended sentence. It was thus said that the sentencing judge achieved several pillars of the sentencing process. We were referred in that regard, to *The People (DPP) v. Broe* [2020] IECA 140, wherein Edwards J, giving judgment for the Court of Appeal, observed at para. 74:

> "*The imposition of the suspended portion still communicates society's deprecation of, and desire to censure, the offending conduct, while sparing the offender (providing he/she adheres to the conditions on which the sentence was suspended) the "hard treatment" that would otherwise have to be endured if the suspended portion were required to be served. Accordingly,* ***suspending a sentence in whole or in part will often be an appropriate way of reflecting mitigating circumstances, particularly where amongst the factors which the sentencing judge wants to reward is progress towards rehabilitation or reform to date, and where he/she also wishes to incentivise continuation along that path.*** *The reward for mitigating circumstances which require to be acknowledged including progress towards rehabilitation or reform to date, may be provided by the leniency associated with suspension, while* ***the incentive to continue with rehabilitation or reform is provided by the conditionality associated with the suspension.*** *Often, where this mechanism is used, the length of the suspended period may be somewhat greater than it would be if recourse was to be had to a straight discount, as an extra incentive towards future desistence having regard to the consequences of non-compliance with the conditions of the suspension*."
>
> [Emphasis added by the respondent.]

71. The respondent further observed that this Court has held in *The People (DPP) v. Coughlan* [2019] IECA 173 that going the "*extra mile*" and suspending all or part of a sentence to incentivise rehabilitation requires a sound evidential basis involving a real prospect of rehabilitation. Counsel submitted that in the present case, the respondent's efforts at rehabilitation were evident, and he pointed to *inter alia* the respondent's cooperation with the criminal justice process; adherence to safety orders; his guilty plea; his addressing of alcohol and substance abuse, and; undertaking

anger management. It was further said that the respondent fully availed of the opportunity to engage with the Probation Service who apprised the sentencing judge of his ongoing rehabilitative progress and likelihood of successful outcome by future involvement with the Service. Counsel argued that in the circumstances, the sentencing judge emphasised the desire for continued rehabilitation of the respondent and elected to impose a suspended sentence with significant and onerous conditions attached thereto, thereby ensuring compliance would result in not only a positive outcome for him but also for the complainant, his current partner, and society at large. It was submitted that in the circumstances, this approach was entirely appropriate.

Criticism of Applicant's Choice of Authorities

72. Counsel for the respondent is critical of the applicant's submission that a 5-year headline sentence would have been more appropriate for the assaults causing harm in the present case. In the first place, it was said that the applicant failed to put forward a specific authority to support that contention; and counsel for the respondent was further critical of the applicant's reliance upon the *Maguire* and *Sutton* cases respectively, contending that they were readily distinguishable having regard to their (very different) circumstances. It was submitted that the *Maguire* case was not an appropriate comparator, inasmuch as that case concerned false imprisonment and there was not the same level of mitigation or emphasis on rehabilitation as in this case. The *Sutton* case, in turn, had involved incidents of stabbing, which, in any event, resulted in the nomination of a headline sentence of 4 years on appeal. Counsel submitted that the absence of a weapon in the present case was an important distinguishing factor and noted that in *The People (DPP) v. Crilly* [2019] IECA 143 an assault causing harm involving the use of a barstool only attracted a headline sentence of 2 years' imprisonment, a nomination that was upheld on appeal by this Court in the context of an undue leniency review, albeit that the original post-mitigation sentence (a wholly suspended sentence of 14 months' imprisonment) was found to be unduly lenient and was adjusted to one of 18 months' imprisonment with the final 6 months thereof suspended.

73. Counsel also contended that the *Connor* case relied upon by the applicant in support of the desideratum of promoting deterrence is wholly distinguishable in circumstances where Ní Raifeartaigh J.'s remarks were made in a specific context, namely in sentencing "*for offences of this nature*" (being offences involving the use of knives). He observed that the Court in *Connor* had referred to the decision in *The People (DPP) v. Farnan* [2020] IECA 256 which, it was said, bore factual resemblance to the present case. In that case, Ní Raifeartaigh J., again delivering judgment of the Court, had observed at para. 27 (reproduced in full):

> "*27. The present case typifies the kind of difficult dilemma that can face a sentencing judge. On the one hand, there is the fact that an appallingly violent offence was committed by Mr. Farnan against a woman, the mother of his child, in her own home; on the other, since the offending, he has made serious and fruitful attempts on the to rehabilitate himself from a life-long problem of substance misuse, and the probation service are hopeful of assisting him with his other psychological problems outside the prison setting. If one were to focus heavily on the gravity of the offence itself and the principle of general deterrence, as well as the 'punishment' aspect of sentencing, in order to send out a strong message that such incidents of so-called 'domestic violence' against women will be heavily punished, that would lead to one result, undoubtedly a substantial custodial one.* ***If one***

> ***were to focus, instead, on considerations of individual deterrence and rehabilitation, one might arrive at a rather different conclusion.*** *Indeed, one might take the view that all the substantial efforts that Mr. Farnan made to address his deep-seated problem behaviours might be undone if he were sent to prison, and that he might be more rather than less likely to re-offend in the future if that course of action were adopted. General and individual deterrence do not always pull in the same direction. And there is no doubt that rehabilitation, in an appropriate case, is something that the criminal courts reward and encourage, not merely for the sake of the individual accused but also the protection of the public at large.*"
>
> [Emphasis added by the respondent]

74. Counsel asks us to note that, notwithstanding a factual distinction arising in respect of the type of assault to which Mr. Farnan pleaded guilty (i.e. s. 2 assault, as opposed to s. 3 in the present case), the Court in *Farnan* regarded the 33-month suspended sentence imposed at first instance as not trespassing "*into the zone of undue leniency*". It was said that *Farnan* has some significant elements which are similar to the present case.

No Strangulation

75. Further, counsel quarrelled with the Director's reliance on the *Campbell* case. While he did not seek to gainsay the prosecution case which was accepted by way of guilty plea, he stressed that there was no allegation of strangulation made against his client. He argued that *Campbell* is distinguishable on the basis that the respondent in the present case merely placed his hand over the complainant's mouth, which is not the same as the definition of strangulation which, as per *The Oxford English Dictionary*, refers to squeezing one's windpipe or neck so as to kill.

Guilty Pleas

76. As regards the respondent's guilty plea, counsel submitted that it would inaccurate and unfair to suggest that the pleas in the present case were not at an early stage. He noted that it was accepted by the prosecution in evidence at the sentencing hearing that an indication to plead was given at an early stage, and that the applicant is aware that not all of the allegations made by the complainant were continued with. In circumstances where there was a dispute about one particular element, it was submitted that the possibility of pleading guilty in the District Court and being sent forward on signed pleas to all of the offences did not arise as far as the procedure envisaged by s. 13(2)(b) of the Criminal Procedure Act 1967 was concerned.

Respondent's Remorse

77. Counsel submitted that the respondent did extend an offer to pay a monetary sum as a practical or concrete token of remorse. This offer was not accepted by the complainant, and instead the respondent paid the sum to charity. Counsel referred us to the dicta of O'Malley J. in *The People (DPP) v. Stephen Duffy* [2023] IESC 1 wherein the learned Supreme Court judge noted that:

> "*A voluntary offer of financial compensation is in all cases to be considered as a factor in mitigation, if the court finds that it is a genuine expression of remorse and acceptance of responsibility for the harm done. The weight to be attached to it will vary according to the court's view of the genuineness of the offer and the degree of hardship it is likely to cause the accused, as well as all the other circumstances of the case*."

Application of s. 40 of the Act of 2018

78. Counsel submitted that the sentencing judge may be inferred as having had regard to s. 40 of the Act of 2018 as an aggravating factor applicable to the present case. It was said that the fact and nature of the relationship between the parties were at the fore of her ruling and that they formed the basis of the conditions attaching to the suspended sentence. Moreover, it was observed, counsel for the applicant had brought this provision to the sentencing judge's attention at the sentencing hearing.

Ancillary Penalty – Public Opprobrium

79. Lastly, and without prejudice to the appeal, counsel for the respondent submitted that the significant media coverage associated with this case had meant that his client had suffered a secondary or ancillary penalty. Reference was made to a particular news story and to a radio interview, and one consequence of the highlighting of the case had been that it led to the respondent subsequently losing his employment in the circumstances outlined earlier in this judgment. Counsel submitted that in the *Sutton* case this Court impliedly accepted at para. 82 of its judgment that such an ancillary penalty is to be borne in mind when sentencing. The Court of Appeal said:

> "*We accept that [the Respondent] is a professional man whose reputation is severely damaged and whose business has been, and will continue to be, badly affected in consequence of the penalties that have had to be applied to him, and that this represents an element of inevitable additional hardship that he must endure*."

80. While counsel did not purport to gainsay the harm caused to the complainant or her entitlement to waive anonymity so as to share her experiences, it had involved "*public opprobrium being visited upon the Respondent in a significant an profound way*", and counsel noted that "*sentencing is neither an exercise in vengeance nor the retaliation by victims on a defendant*", quoting Denham J. (as she then was) in *The People (DPP) v. M.* [1994] 3 I.R. 306. It was thus said that public opprobrium including the demonstrable and practical consequences for the respondent was a factor that the Court below was (and in the event of a re-sentencing, this Court is) entitled to take into account.

The Court's Analysis & Decision

81. The law with regard to undue leniency reviews, now permitted under s. 2 of the Criminal Justice Act 1993, is not in controversy in this appeal. The applicable principles have been developed and elucidated in cases such *The People (DPP) v. Byrne* [1995] 1 I.L.R.M. 279; *The People (DPP) v. Redmond* [2001] 3 I.R. 390 and *The People (DPP) v. Stronge* (cited previously), and are accepted by all concerned.

82. To succeed, the applicant must establish that the sentence imposed by the court below represented a substantial departure from the norm. Such a departure will usually have been caused by a clear error of principle. It is immaterial whether an appellate court would have imposed, if it had been sentencing at first instance, a different sentence to the one that was actually imposed. That is not the test. For the Court to interfere, the sentence must have been shown to have been not just lenient but unduly lenient in the sense just spoken about. Moreover, in determining whether that is the case, an appellate court is obliged to consider and give

significant weight to the reasons stated by the sentencing judge at first instance for imposing the sentence that he or she imposed, although this will not necessarily be determinative.

83. Having considered all the circumstances of the present case, including the helpful submissions by counsel on both sides, we have found the sentence imposed by the court below to have been undoubtedly lenient. The question is whether it was unduly lenient? There was a strong case for the showing of leniency on account of the substantial mitigating factors (including relative youth at the time of offending; early pleas of guilty; lack of previous convictions; a record of recent gainful employment, and; ostensible remorse, to mention the main ones); the existence in the respondent's personal circumstances of underlying adversities which may have influenced his behaviour including deep-rooted psychological issues and insecurities giving rise to anger management difficulties, depression, anxiety and hyperarousal; addictions to alcohol and cocaine, and; a track record of some achievement in addressing, or seeking to address, those adversities.

84. Yet, despite the case for leniency, the gravity of the offending at issue was very serious, engaging a requirement for appropriate punishment and censure in the structuring of any suite of sanctions to be imposed, and the desirability of promoting deterrence, both generally and specifically in the case of the respondent.

85. There is no doubt, therefore, that the sentencing judge was faced with the very dilemma alluded to by Ní Raifeartaigh J. at para. 27 of the Court's judgment in *The People (DPP) v. Farnan* (cited previously). In such a case, we are required have regard to, and indeed afford great weight to, the reasons advanced by the sentencing judge in the court below in justification of the sentence that was imposed at first instance, and we have done so. However, we have ultimately concluded, for reasons which we will proceed to set out, that the sentences imposed were in fact unduly lenient, in the sense of being a significant departure from what we believe would have been the appropriate sentence, i.e., the norm, in this type of case.

86. As regards the concept of the norm, we recognise that the offence of coercive control is a relatively new offence, and that there are but few comparators. The maximum penalty provided for that offence in the case of a prosecution on indictment is a fine and/or imprisonment for up to 5 years. The only case of which we are aware in which there is a written judgment that directly considers the offence of coercive control contrary to s. 39 of the Act of 2018 is *The People (DPP) v. Kane* [2023] IECA 86. Some assistance is also to be gained from sentencing cases involving other offences that were committed in the context of an intimate relationship, such that s. 40 of the Act of 2018 is engaged, and in that regard the cases of *Sutton* and *D.C.*, referenced in submissions, do provide some assistance. However, bearing in mind the general dearth of comparative caselaw, and proceeding on first principles, we have seen fit to again adopt the approach taken in *The People (DPP) v. Mahoney* [2016] IECA 27, where we said:

> "*39. Of course, in the absence of comparator judgments, there is no norm in the narrow sense of that word against which to measure the sentence imposed in this case.*
> […]
> *40. However, we do not consider that in referring to a divergence from the norm, the Supreme Court, in The People (Director of Public Prosecutions) v. McCormack, intended that the word norm should applied and understood in the narrow sense of being a usual situation referable to comparators. Rather, we believe the norm spoken of refers to what*

might be predicted to be the result, within a reasonable margin of appreciation, of a faithful application to the facts of the individual case of the appropriate sentencing principles, whether or not there are any useful comparators."

The Headline Sentences

87. No issue is taken by the applicant with respect to the headline sentence of 3 years' imprisonment nominated by the sentencing judge for the offence of coercive control. We think that the applicant is sensible in adopting that position in the circumstances of the case. The sentencing judge in setting the headline sentence was entitled to take into account the nature of the controlling behaviour, the physical violence involved, the period over which it occurred, and the extent to which there was a serious effect on the victim (though the mere fact that the victim was seriously impacted would not be aggravating *per se*, as having a serious effect is an inherent ingredient of the offence). We are satisfied from the sentencing judge's remarks that these considerations were duly weighed and that the nominated figure of 3 years' imprisonment for the headline sentence was appropriate.

88. However, as regards the headline sentences of 3 years' imprisonment nominated by the sentencing judge for the offences of assault causing harm, we consider that these were too low in the circumstances of the case. In our view, there were significant aggravating factors that would have merited a higher global headline sentence, in a situation where the sentencing judge was opting to sentence in that way. There was significant physical violence used by the respondent. Although it is possible to conceive of more serious forms of such offending, e.g. if a weapon was used, or where greater physical injury was caused, it is significant that both physical and psychological harm was done in this case. Moreover, the frequency and duration of the offending was significantly aggravating in the circumstances of the case. There is the fact that in one instance the complainant was assaulted in her own family home, a place where she was entitled to feel safe. All of the assaults causing harm were committed in the context of an intimate relationship, thereby engaging s. 40 of the Act of 2018, necessitating the imposition of a somewhat higher sentence than would otherwise be imposed. The taking into consideration of the offences of criminal damage should also, in principle, have led to a somewhat higher sentence than would otherwise have been imposed.

89. In terms of sentencing objectives, this was offending that called for significant censure on behalf of society, for a modicum of punishment in the form of hard treatment in pursuance of the objective of retribution, and for its deterrent effect both general and specific. The desirability of pursuing these objectives was not necessarily inconsistent with also pursuing rehabilitation as a sentencing objective, and we will come to that, but it was a question of achieving the right balance. But we can say that the nature of this offending, involving as it did multiple assaults causing harm committed in the context of an intimate relationship, and in a situation where criminal damage offences were also to be taken into consideration in the overall package, was such that it merited in principle a substantial custodial sentence proportionate to the offender's culpability and the harm done, to be moderated only by the affording of an appropriate discount for such mitigation as existed in the case.

90. The range of penalties available for assaults causing harm contrary to s. 3 of the Act of 1997, following conviction on indictment, is again a fine and/or imprisonment for a term not exceeding 5 years. We consider that, in terms of the nomination of a headline sentence, this offending required to be located at the upper end of the available range due to the nature and frequency of the assaults; the harm done to the victim, particularly the very substantial psychological harm perpetrated; the fact that they were committed in the context of an intimate relationship; the breach of trust involved, and; ancillary circumstances such as, in the case of count no 6, assaulting the victim in her own home, and the need to reflect the further criminality that was involved in the commission of two criminal damage offences. We would observe that the physical harm done in this case was, thankfully, not of the most egregious variety but we are satisfied that the psychological and emotional abuse perpetrated was indeed egregious.

91. This court has made clear in the case of *The People (DPP) v. McGrath, Dolan and Brazil* [2020] IECA 50 that judges should not operate on the basis that a starting point of 5 years for assault causing harm is not generally available and that it should only be considered, if it be ever considered, in exceptional circumstances.

92. It would have been open to the court below (and similarly it would be open to this Court in the event of a resentencing) to impose consecutive sentences for the various assaults that were committed, and the cumulative total of such sentences, even after application of the totality principle, might well have exceeded the 5-year maximum that is available for a single count of assault causing harm.

93. However, we consider that the sentencing judge in this case adopted the right approach in deciding to sentence globally and to reflect the gravity of the overall offending by imposing appropriately concurrent sentences of equal duration on all the assault offences calibrated to reflect the overall gravity of the case. In circumstances where that was the approach that was going to be adopted, we consider that the actual headline sentences nominated by the sentencing judge for the assaults causing harm in this case were substantially too low. This was a case in which the sentencing judge would have been within her rights to have started at 5 years' imprisonment. To have nominated a headline sentence as low as 3 years' imprisonment was in our view an error of principle.

Allowing for mitigation

94. We have already acknowledged that the respondent was entitled to a substantial discount for the mitigating circumstances in his case. The initial discounting by the sentencing judge at first instance involved a discount of one third, reducing the headline sentence from 3 years' imprisonment to 2 years' imprisonment. In doing so, the sentencing judge referenced: the early pleas of guilty; the respondent's relative youth; his lack of previous convictions; the fact that he had stayed out of trouble since the offences; his efforts at addressing his anger management, and; his drug and alcohol addictions. She also referenced the fact that he had recently become a father, was respecting the Safety Order that the victim had obtained, and had put a lot of structures in place in relation to his life. If she had left it at that, we would be concerned that a discount of one third only would not have been enough.

95. However, the sentencing judge went on to consider whether or not in the circumstances of the case it would be appropriate for her to go further and to suspend all or part of the 2-year

sentence that she had provisionally decided upon. In doing so, she took into account, as she was entitled to do, that the respondent had been assessed by the Probation Service as being at moderate risk of reoffending absent significant interventions in relation to the matter. She took into account that he had co-operated with the Probation Service in their assessment, and specifically referenced that he was at that point in touch with the MOVE programme. This prompted her to say:

> "*The court is of the view that in the circumstances where he is young and has done a significant amount of work since the ending of his relationship which gave rise to these counts the Court wishes to give him a chance in relation to this matter, so the Court will suspend those sentences that were imposed on counts 1, 2, 3, 4, 5, and 6 in their entirety, but they are not going to be suspended simplicity. They're going to be suspended on very specific terms* [which the sentencing judge then specified]"*.*

96. The applicant complains that the sentencing judge engaged in double counting in deciding to suspend the sentences she had earlier nominated in their entirety. She had certainly referenced his youth previously, and it is true that she had referenced a number of the steps that he was taking towards rehabilitation, although not specifically his recent engagement with the MOVE programme or with the Probation Services assessment. We do not consider that there was in truth any substantial double counting and we are satisfied that the judge's sentencing ruling has to be considered in its entirety and in full context. We think she was entitled to go further than she had initially done. The discount that she had afforded for steps taken towards rehabilitation in her initial discount were intended to reward progress to date but she was absolutely entitled to go further and seek to incentivise continued and future progress in that regard. We find no error of principle in the fact that she was prepared, in the circumstances of this case, to go an extra distance in furtherance of her desire to give this respondent "*a chance*". We agree that there was a basis for doing so. Where we quarrel with her, however, is with the extent to which she opted to do so. We do not agree that the circumstances of the case merited a suspension of the entirety of the post-mitigation sentences provisionally nominated by her. Hard though it might be for the respondent to bear, this was a case that merited a carceral component to be actually served. While we consider that the sentencing judge did not err in concluding that it was open to her to go further than she had initially done, and to include a suspended component in the sentence, we consider that it was an error to conclude that it was appropriate to completely suspend the sentences. By doing so, the resultant sentences were, in our view, outside the norm in the sense that we have spoken about, and consequently were unduly lenient.

97. In circumstances where we have identified a number of errors in the sentencing process, and have concluded that the sentences imposed at first instance were outside the norm and unduly lenient, we will proceed to quash those sentences and to resentence the respondent.

Re-sentencing

98. We intend to adopt the same approach as the sentencing judge in the court below and to sentence globally insofar as the assaults causing harm are concerned.

99. Dealing in the first instance, however, with the offence of coercive control, being count no. 1, we will once again nominate a headline sentence of 3 years' imprisonment. We will discount from that sentence by one third, or 1 year, to reflect the mitigating circumstances in the case

including rewarding progress towards rehabilitation up to the date of sentencing in the court below. To reflect continued progress towards rehabilitation in the interim and to incentivise future progress in that regard we will suspend a further one third of the headline sentence, being a further year, leaving a net sentence of 2 years' imprisonment with the final year thereof suspended for a period of 4 years and on the same conditions as were imposed by the court below. The bottom line therefore (assuming the respondent adheres to the conditions attaching to the suspended portion of the sentence) is a net carceral sentence 1 year's imprisonment to be actually served.

100. Turning then to sentencing for the assaults causing harm. In respect of each of count nos. 2 to 6 inclusive, we will nominate headline sentences of 5 years' imprisonment. From this we will discount by 2 years to reflect the mitigating circumstances in the case including rewarding progress towards rehabilitation up to the date of sentencing in the court below. To reflect continued progress towards rehabilitation in the interim and to incentivise future progress in that regard we will also suspend a further 2 years of the headline sentence, leaving a net sentence of 3 years' imprisonment on each count with the final 2 years thereof suspended for a period of 4 years and on the same conditions as were imposed by the court below.

101. All sentences are to be served concurrently and are to date from the date of re-sentencing but with credit for time served on remand (if any).

102. The bottom line therefore (assuming the respondent adheres to the conditions attaching to the suspended portion of the sentences) is a globally applicable net carceral sentence of 1 year's imprisonment to be actually served.