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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

CHRISTOPHER HUGHES

**Mr Michael Chambers BL (instructed by McNamee McDonnell, Solicitors) for the
Appellant**

(who did not represent the Appellant in the lower court)

Ms Geraldine McCullough (instructed by the PPS) for the Respondent

Before: Keegan LCJ, McBride J and McFarland J

KEEGAN LCJ (delivering the judgment of the court)

Introduction

[1] In this appeal we provide guidance in relation to sentencing in cases involving multiple incidents of domestic violence.

[2] The appellant appeals, with leave of the single judge, a sentence imposed by His Honour Judge Kerr QC ("the trial judge") at Newry Crown Court on 19 August 2021. On that date the appellant was sentenced to a total of 50 months' imprisonment, 50% of that to be served in custody and 50% on licence for a total of 15 offences.

[3] The offences for which the appellant was sentenced are summarised as follows:

Count 1	Using a motor vehicle without insurance
Count 4	Assault occasioning actual bodily harm
Count 5	Common assault
Count 8	Common assault

Count 9 Attempted criminal damage
Count 10 Common assault
Count 11 Possession of an offensive weapon
Counts 12, 13, 14, 15, 16, 17, 18 and 19 all common assault

In addition, four other counts were left on the books, namely one common assault, two threats to kill and one dangerous driving.

[4] The sentences reached were on a mixed consecutive and concurrent basis. For the assault occasioning actual bodily harm the trial judge imposed a sentence of 24 months. For six of the more serious common assaults he imposed concurrent sentences of 18 months consecutive to the 24 month sentence and for the remaining assaults, the possession of an offensive weapon and the attempted criminal damage the appellant was sentenced to a sentence of 8 months consecutive with the other two sentences. For the driving offence a sentence of two months and a two year disqualification from driving was imposed to run concurrently with the other sentences. There were therefore three substantive sentences made up of 24 months, 18 months and 8 months.

[5] The appellant had pleaded not guilty to the 19 offences on the indictment on 19 May 2021. He was re-arraigned on 6 July 2021 when he pleaded guilty to the 15 offences as set out above.

Factual Background

[6] This case arises in a domestic context. The appellant and the complainant had been in a relationship from 19 July 2018 to 16 May 2020 so for almost two years. There is nothing particular of note in the first year of the relationship, however as is apparent from the offences the second year of this relationship was categorised by a catalogue of violence and abuse. The complainant first contacted the police on 22 May 2020 to enquire about making a complaint about domestic violence she had suffered from her former partner after she had spoken to Women's Aid in Dundalk. The complainant undertook an Achieving Best Evidence ("ABE") interview on 25 June 2020. This comprises the substance of her complaints and the various counts which then formed the criminal indictment as follows.

[7] The first offence in time is the driving offence which the appellant pleaded guilty to. This occurred on 13 February 2019. The remaining 14 offences of which the appellant was convicted were all committed over a period of approximately one year from the summer of 2019 to May 2020 during his relationship with the complainant and are therefore categorised as domestic violence offences. They span ten distinct incidents over a period of approximately a year.

[8] During the ABE interview the complainant provided a general overview of the relationship as follows. She referenced the fact that the couple lived together at the appellant's grandmother's home during lockdown and prior to that and also

during lockdown they stayed together at the complainant's own home. The complainant described a catalogue of incidents during their relationship. She described the appellant as 6' 2" and 18½ stone in weight while she was 5' 6" weighing 9-9½ stone. The complainant said that during 2019 when they argued the appellant said it was because the complainant was grieving over the loss of her father who had died three years previously. The complainant also said when she threatened to leave the appellant threatened that he would commit suicide and so she always went back into the abusive relationship.

[9] The first incident of domestic violence which forms the basis of count 2 and 4 occurred during the summer of 2019. This arose due to an argument which occurred over the complainant's suspicions that the appellant was cheating on her. During the course of an interaction with the appellant, the complainant described how he hit her on the side of her head and on her stomach when in a car together. He grabbed her head, squeezed her face and nose and threw her head around. She was screaming. He exited the car and kicked the fence of his mother's house. The complainant drove off crying. The appellant then rang her and said he was going to kill everyone in the house and as a result she returned. Then he got back into the car and was shouting abuse at the complainant so she pulled over. She told him to get out of the car. After she said this the appellant grabbed her, hit her face, and holding her head down close to the handbrake he squeezed her nose so hard that she felt a crunch. He got out of the car and stormed off. The complainant's nose was bleeding and swollen. Her ear was red and black, she had scrapes down her neck and swollen lips. She later developed black eyes from this assault.

[10] The second incident occurred in January 2020 and forms the basis of counts 5-9 on the indictment. These offences arose following a row at the complainant's home, about the complainant's suspicions that the appellant had been cheating on her with another girl. The complainant said she did not want to be with the appellant any longer and so he packed his bag. The complainant planned to drive him home to Newry. While the complainant was driving, the appellant pulled at the steering wheel, as they approached oncoming vehicles, threatened he would drive onto oncoming traffic and kill the two of them, he then hit the complainant on the stomach, on the head twice and slammed her head against the driver's side window. The complainant was in shock and fear and crying throughout the journey. They continued to argue in the car and he again hit her on the stomach and on the side of the head. As a result of this the complainant sustained a sore ear. As he exited her car the appellant kicked the back of her car.

[11] The third incident was on 22 February 2020 and is comprised in count 10. On this date the couple were babysitting the appellant's two month old nephew who was staying with them overnight at his grandmother's home. They were arguing as the child sat on the complainant's knee. The appellant hit the complainant twice on the head and grabbed the child from her. He also tried to grab her by the throat but she pulled away and he kicked her on her stomach. The complainant left the house but when the appellant rang and asked her to come back she did. Following this

incident the appellant's grandmother asked the complainant about her bruises and marks on her face and the complainant lied and said she had sustained them as a result of football training.

[12] The fourth incident occurred in early April 2020 and is comprised in counts 11 and 12. This was a day when the parties were at the appellant's grandmother's house. The appellant had a black serrated camping knife which he held at the complainant's neck as he held her down on their bed and threatened her. As the complainant cried for him to stop she was afraid of the feel of the knife against her neck. The blade was about five inches. The complainant said that could have been an incident which happened for less than 10 seconds during which she had cried for him to stop.

[13] The fifth incident occurred on the second week of April 2020. The parties had gone fishing at a local river. They had an argument over the appellant cutting hair for people during lockdown. The appellant then grabbed the complainant by the throat, squeezing her really hard for about 10 seconds. As a result of this, the complainant cried. She pushed him off and said "I am sick of you thinking you can lay your hands on me." In reply the appellant said "I am sick of you always accusing me of things, why can't you just leave things, you are always wrecking my head." The complainant then left but the appellant followed her into the car and hit her on the side of her head with the back of his hand which she described as sore. The complainant also noted that the appellant did not seem to care that this assault was in public. These offences are comprised in counts 13 and 14.

[14] The sixth incident was at the end of April or early May and is comprised in count 15. The complainant described that this incident occurred in the house that they shared, the dog was sitting on the bed. The appellant threw her around the bed holding her throat and dragged her off the bed and then still holding her by the throat he held her up so that her feet were dangling off the floor. The appellant's arms were extended upwards as far as he could reach. The complainant said she felt like her neck was going to pull out. This lasted for 5-8 seconds. The appellant let go and she fell to the floor. She felt dizzy and was afraid she would pass out. As the appellant stepped over her the appellant said "die on the floor for all I care." The complainant got up and pushed him. He grabbed her and put his arm around her and while holding her round her neck he held her down. The argument ended when the complainant hit the appellant on the testicles so that he fell. The complainant apologised for that to which the appellant replied "No it's ok. I'm proud of you for defending yourself. I'm proud of you for doing that."

[15] The seventh incident occurred on 22 April 2020 at the appellant's grandmother's house and is comprised in count 16. On this occasion the appellant was cleaning up after a dog. The complainant made some suggestions as to how he could do it better. The appellant then pushed her by her chest and kicked her. Afterwards the appellant sent text messages to the complainant denying that he had done so.

[16] The eighth incident occurred in late April 2020 and is comprised in count 17. This incident occurred in a room of the appellant's grandmother's house. They were tussling on the bed, he grabbed and pulled her off the bed. He pushed her down on to the ground face down. He sat on top of her back with his hands around her neck, twisting and pushing her neck forward. It was so painful she thought he was going to break her neck. She was crying because of the pain. It stopped and then they argued again. At this point the appellant tried to fling her and then pushed her down into a corner of the room, on to the floor. Again, he was on top of her as she was lying on the ground. She kicked him on the leg as hard as she could, to get him off and her neck was sore for a number of days.

[17] The ninth incident occurred at the start of May 2020 and is comprised in count 18. It took place in a room at the appellant's grandmother's house. The parties were arguing because the appellant had taken her car the previous day and stayed out to 6am and then she saw Tinder Dating App messages on his phone. As a result there was a tussle on the bed between the appellant and the complainant. The appellant dug his elbow into the side of the complainant's leg. She kicked back at him and screamed due to the pain which she described as excruciating. The complainant sustained a large bruise the size of a hand and was limping for days.

[18] The tenth, and final incident, occurred on 15 May 2020 comprised in count 19. The parties were at the appellant's grandmother's house in the kitchen, arguing about cereal boxes. The appellant was playing on X-Box. The complainant heard him thundering across the floor towards her back. The appellant grabbed her by the ears, squeezing them, and pulled her head around, digging into her head and causing her to have sore ears. She slapped him on his arm. He then punched her to her chest which is the first time he had ever punched her. The complainant had a lot of pressure on her chest. Then the appellant took hold of the complainant's shoulders and kned her in the stomach and she fell down. The complainant screamed when punched and was left shaken and struggling for breath. The appellant's sister approached her and asked what happened but the complainant said the appellant only pushed her.

[19] After this incident there was acceptance by the appellant that he lied to her throughout their relationship about contacting girls and having a driving licence. The complainant realised that the appellant had falsely blamed his mother for driving the complainant's car and getting driving fines and she found out that in fact he had no licence and therefore no insurance to drive. The complainant then took all her belongings and left. After leaving the complainant received messages from the appellant which included threats such as "you're fucking dead." The appellant also said that he had taken an overdose and he was going to commit suicide. Subsequently the appellant sent apologies for what he had done and said he was ashamed of himself. As a result of this series of telephone communication the complainant had to block the appellant from continuing to contact her. In

subsequent weeks the appellant's mother asked the complainant to forgive him and said if she could then so would the rest of the family.

The appellant's interview

[20] The appellant was interviewed on 6 July 2020. During this interview he confirmed that he and the complainant had an argumentative relationship, he accepted that he kicked his mother's fence in bad temper, but he denied assaulting the complainant. He confirmed that there was an incident in the complainant's car when he put his arm up to restrain her and she hurt her nose which bled. He accepted that they, like all couples, fought but insisted there was no violence but if there was it was by the complainant. He said he never kicked her car, he merely slammed the car boot down. In relation to the incident when they were minding his nephew he claimed that the complainant came towards him, while he held the child, and he pushed her away with his foot. He claimed that the complainant always had bruises on her from football. He said that the only time he held her down on the bed was when play fighting "as couples do" and "she gave as good as she got when we were play fighting. It was a bit of craic."

[21] Describing the day of the argument when he was fishing he said that the complainant smashed his £250 Tommy Hilfiger watch by throwing it at him. He admitted that he had said horrible things to her on that date. The police asked the appellant about messages that he had sent to the complainant in which he appeared to admit certain assaults. He said he would have agreed to do anything just to get back with the complainant. The appellant admitted that he did say to her "go die on the floor for all I care" because he just thought she was being dramatic as she lay on the floor. In relation to the incident when he allegedly lifted her by the neck, he said he did not choke her but he did grab her by the neck as he pushed her to the ground. He saw this as self-defence because she had thrown her mobile phone at him, striking him on the chest.

[22] During the interview the appellant maintained that there was a lot of verbal abuse between the couple. He said that he saw bruises on the complainant all the time but he thought that they were from football. He accepted that he had been very spiteful to the complainant and he told her a lot of lies but he never cheated on her. He claimed that they each caused the other emotional abuse. He claimed that he only ever hit the complainant once which was the time he grabbed her by the throat and pushed her. He admitted he did not have a driving licence or insurance to drive, but he claimed he never drove the complainant's car in Northern Ireland. He also said "that time there she was constantly pushing me in the back too. That time there I thought we were only messing about and she got scared."

[23] When some other evidence was put to the appellant by police during interview he said "she's making me look like a fucking fool here", and he became angry saying "I'm accused of being a violent animal and when I get proof that I

didn't do it she will get to walk away scot-free. I hope she goes down for fucking this. This is a joke. You can see who is being the vindictive one here."

The appellant's antecedents

[24] The appellant has eight criminal convictions including three for common assault and a caution for assault occasioning actual bodily harm. There are pending prosecutions in the Republic of Ireland. The common assault convictions relate to assaults against the appellant's mother and partner and also against a neighbour.

The pre-sentence report

[25] A pre-sentence report was prepared in relation to the appellant and is dated 6 July 2021. In this the probation officer describes the background history of the appellant as follows. He is a single 30 year old man who works as a barber and lives alone in private rented accommodation near Newry town centre. The appellant was brought up in the Damolly area of Newry with his five siblings. The appellant was exposed to adverse childhood experiences, he witnessed domestic violence within the home between his parents and some violence was perpetrated against him and his siblings by their father. The appellant's father had an alcohol problem and that he was physically aggressive at home. The appellant was largely reared by his grandmother. The appellant completed second level education with no particular issues.

[26] When asked about the index offences, the appellant acknowledged the harm he has caused. He disputed some of the detail of the victim's statement but he said that he accepted his aggressive behaviour towards the complainant was unacceptable. He volunteered that his "domestically abusive behaviour started off as "light" such as a push to the shoulder but that it escalated." In relation to the assault occasioning actual bodily harm conviction the appellant stated that he had not intended to hurt his partner to the extent that he did. In relation to this incident he also maintained that she slapped him to the shoulder and he got her in a headlock and squeezed her arm which is how he believes he damaged her nose. Assessing this account the probation officer said that:

"This very much minimises the account that the victim gave for how she received her injuries that he hit her on both sides of the head and squeezed her nose and which cracked and crunched."

[27] The probation report goes on to say:

"Concerning the other assaults on her, the appellant shared that grabbing his partner by the neck happened frequently, but he also acknowledges kicking and hitting and the other actions detailed by the victim. The

appellant acknowledged that the knife was present in their bedroom, he states the reason for this was that he was fishing a lot during lockdown and that all his fishing equipment was in the bedroom.”

[28] The probation officer described the offences as representing an escalation from the previous convictions for common assault and summarised the case as follows:

“He engaged in persistent domestic abuse against his long term partner and whilst PBNI have not had access to the Victim Impact Report, it is evidence from the victim’s police interview the physical and psychological harm that the appellant caused to her and no doubt this is something that will require some recovery time, particularly the psychological effects. The appellant acknowledges that he has caused harm to the victim and expresses regret for that. He was assessed as presenting a medium likelihood of general re-offending and not presenting a significant risk of serious harm at this time.”

The appellant’s expert report

[29] A report was also prepared for trial by Dr Raymond Paul, Consultant Psychiatrist. This report set out the history and background of the appellant and referred as did the probation report to difficulties that he had experienced in his life. He said that he did not have a diagnosis of Post-Traumatic Stress Disorder. It also referred to having 10 therapy sessions in and around September 2020 but also that he thinks he needs anger management and had looked at YouTube videos on this. The report concluded in relation to his presentation:

“The above will not have had a significant impact on his ability to form the requisite of *mens rea* for these offences and he will have been able to appreciate the difference between right and wrong, and that the behaviours he was engaging in and carrying out on others would be likely to cause distress and harm. ... There is nothing in the interview that would suggest that he has a psychiatric impairment of his ability to engage in the proceedings and he would likely be deemed fit to plead. There is no major psychiatric illness.”

The Defence Statement

[30] A defence statement was filed which indicates that the appellant wished to challenge all of the charges against him. Paragraph 4 of the statement also reads as follows:

- “(a) The defendant accepts that he and the complainant have an argumentative relationship, on occasions they would play fight but this was only in good spirits.
- (b) The complainant plays Gaelic football and the defendant avers that any bruising that she may have sustained came from football and not from any acts of violence by him.
- (c) In relation to count 14, the defendant accepts that he grabbed the complainant by the neck and pushed her. However, this was in the context of an argument in which the complainant had thrown a mobile phone at him, punched him in the testicles and slapped him and he used such force as was reasonable to stop the complainant further assaulting him.
- (d) In the context of phone messages sent by the defendant to the complainant, the defendant avers that on occasions he agreed with the contents of what was sent to him by the complainant but this was simply an effort to win her back after the relationship had broken down.
- (e) The defendant denies driving the complainant’s car in Northern Ireland.
- (f) The defendant avers that the allegations made by the complainant were only made after the relationship ended due to the fact that the complainant believed that the defendant had been unfaithful to her.”

Victim Impact

[31] A Victim Impact Statement was prepared by the complainant. This was put before the first instance court and we have also considered it. In the statement the

complainant describes the ongoing negative impact of the relationship and the emotional and physical abuse. She expresses herself as follows:

“I find it hard to put into words the pain I am feeling every day. I put a brave face on each day to my family and friends but inside I am shattered. The appellant completely broke me down as a person, my self-esteem and confidence are gone as a result. It is only through intense counselling that I have realised how much he manipulated me from day one and used my vulnerability and kindness to my advantage. When I met the appellant, I was at a fragile point in my life after losing my father suddenly just a year and a half before.”

Points made on Appeal

[32] In the course of his oral submissions Mr Chambers raised the following points in support of this appeal:

- (i) That the sentence was manifestly excessive as the judge chose a starting point which was too high for these offences.
- (ii) That insufficient discount was given for the plea of guilty.
- (iii) That the trial judge should have put counsel on notice of the sentence he was thinking of.
- (iv) That the sentence was out of line with the principle expressed in *R v Mandy O'Toole* [2016] NICA 59.

Aggravating and Mitigating Factors

[33] During the course of this appeal it became fairly clear that there is no major issue with the aggravating factors in this case. Mr Chambers accepted that the aggravating factors are those set out in the prosecution submissions as follows:

- “(i) Domestic violence context.
- (ii) Although the abuse mainly occurred at the defendant’s grandmother’s home, that was the place where the victim was staying with him. The abuse also occurred in the car. Both are places where she was entitled to feel safe.
- (iii) Strangulation.

- (iv) The multiplicity of offences over a substantial period of almost one year.
- (v) Relevant criminal record.
- (vi) Weapon – insofar as the knife was used to frighten the victim, albeit not to wound her.
- (vii) The emotional and mental impact this offending had on the victim tending to physical illness in the form of bulimia.”

In relation to the last point (vii) it is accepted that there was no medical evidence of bulimia.

[34] There was more discussion about mitigating factors which were agreed by counsel. The following were suggested:

- “(i) Remorse and acceptance as illustrated by the probation report.
- (ii) A good work history.
- (iii) Compliance with bail conditions.
- (iv) The guilty plea.”

[35] As part of the argument surrounding mitigating factors it was also suggested by Mr Chambers that personal circumstances are relevant in this case although he accepted that they are of limited value given the seriousness of the offending.

Sentencing Remarks

[36] The trial judge described the behaviour in this case as “an appalling catalogue of abuse of this unfortunate victim.” He considered that sentencing the appellant on the basis of the individual charges would not be an adequate way to deal with the severity of the offending. He therefore applied consecutive offences to reach a proper overall sentence. He considered that the duration of the conduct, the nature of the behaviour and the high impact it had on the victim were aggravating factors. He also took into account that strangulation was involved.

[37] The trial judge also took into account mitigating factors which he categorised as the guilty plea, the steps taken by the appellant to deal with his emotional and mental health, the fact that his criminal record was not related to the complainant, remorse and difficulties experienced by the appellant in childhood. The trial judge took the report of Dr Paul into account but commented that the appellant did not

have a diagnosis of post-traumatic stress disorder which was previously mentioned and that he had the ability to know right from wrong.

[38] The trial judge determined the starting point was seven years having taken into account the aggravating factors. Then he decided that there should be a discount of 25%. Given the other mitigating factors the trial judge increased the discount to 40% and arrived at a final sentence of 50 months. The 50 months was made up of three consecutive sentences as described above.

Discussion

[39] At the outset we set out the maximum penalties in the Crown Court for these types of offences as follows:

- Assault occasioning actual bodily harm- seven years
- Common assault - two years
- Criminal Damage - 14 years
- Possession of an offensive weapon - four years
- No insurance - six months and/or a level 5 fine and discretionary disqualification or the imposition of 6-8 penalty points

[40] We also record the unanimity among counsel as to the choice of venue for this prosecution. It is correct, as all accept, that the prosecution of this case occurred in the Crown Court as the Magistrates' Court would simply not achieve justice given the limits on sentencing for these types of offences. It was also accepted that consecutive sentences were appropriate given the multiplicity of offences in this case. There was no case made that this was wrong in principle. Again, that was an appropriate concession.

[41] The appeal therefore boiled down to whether the sentence was manifestly excessive. *Valentine, Criminal Procedure in Northern Ireland*, 2010 at paragraph 15.123 refers as follows:

“A sentence is manifestly excessive if it is higher than the broad range of penalties or other dispositions appropriate to the case, and not merely a sentence higher than the judges of the Court would themselves have imposed.”

We agree with that analysis and reiterate the fact that the Court of Appeal will only interfere where the sentence is manifestly excessive. During the course of the appeal counsel stated that there were no reported cases of this nature involving multiple incidents of domestic violence tried in the Crown Court. It is therefore opportune for this court to set a standard for sentencing in circumstances where a catalogue of domestic violence offences occurs.

[42] The majority of the offences arose in the context of a relationship between the appellant and the complainant. This was a relationship which was clearly characterised by violent and controlling behaviour on behalf of the appellant which escalated over the course of one year. The violence against the victim occurred in various locations including in the home, in public and in a car. It caused injuries although not at the most severe level. We accept that it also had a profound psychological impact upon the complainant. Strangulation was used. This is a significant aggravating factor as this court has said in *R v Campbell Allen* [2020] NICA 25. A knife was also utilised during this catalogue of abuse. The aggravating factors were accepted and clearly placed this offending into a category of high culpability. It is also a case where substantial harm has been occasioned.

[43] There is some mitigation as the trial judge recognised. First there is an element of remorse which is apparent from the pre-sentence report. However, we note from that report that along with acknowledgement of the offences there was still a minimisation of the assault occasioning actual bodily harm. We also note that the defence statement included a claim that the complainant's injuries were caused by football training. This evidence lessens the extent of the remorse and the extent to which the judge can reflect it in the sentence.

[44] The trial judge considered personal circumstances which was correct. We also take into account the appellant's personal circumstances though these are of limited effect in the choice of sentence, see *Attorney General's Reference (No 7 of 2004) (Gary Edward Holmes)* [2004] NICA 42 at paragraph [15]; *Attorney General's Reference (No. 6 of 2004) (Conor Gerard Doyle)* [2004] NICA 33 at paragraph [37]; *R v Keith McConnan* [2017] NICA 40, and *R v Allen* [2020] NICA 25. The appellant clearly did not have good role modelling in his own life in terms of relationships given how his father behaved. He has also made some effort to seek help although that was by way of self-report and no confirmatory evidence was produced. The report from Dr Paul indicates that the appellant does not have impaired functioning. He is therefore a man who can hold down a job and function in society. Overall, whilst some allowance can be made there is a limit to how personal circumstances are mitigation in this case.

[45] Credit for a guilty plea should come after consideration of aggravating and mitigating factors. The maximum credit was clearly not available to the appellant but he still was entitled to significant credit given the value of a plea. Therefore, we do not see anything wrong with the 25% credit applied. In relation to the discount the appellant did not plead at arraignment. He is not in the category of cases who came forward specifically during the Covid-19 pandemic to have the case dealt with and therefore be entitled to greater credit as discussed in *R v Stewart* [2020] NICA 62. This is not a situation analogous to that in *R v Beggs* [2020] NICC 9.

[46] It will be apparent from the above that we do not endorse the methodology used by the trial judge to arrive at the final sentence. The trial judge should have

considered the aggravating and mitigating factors together to reach a starting point prior to discount for a plea. This method would in our view, have led him to think about a range of sentence for this type of multiple offending in which he would find the appropriate sentence after considering aggravating and mitigating factors and discount for the plea. In this type of case involving multiple offences the trial judge also correctly applied the totality principle in order to reach an appropriate overall sentence.

[47] In this case there were 15 offences over a period of one year including one assault occasioning actual bodily harm. Counsel addressed the trial judge in relation to the appropriate range. In particular, we note that prosecution counsel referred to *R v Balmer & Wilson* [2015] NICA 40 referring to *R v Terence Joseph Ritchie* [2003] NICA 45 where Higgins LJ said:

“It is difficult to compare two cases of assault occasioning actual bodily harm ... Ultimately, the court has to consider the culpability of the particular offender and the degree of harm sustained by the particular victim within the fact specific matrix of the particular case. In cases of physical violence the requirements of retribution and/or deterrence may outweigh to a greater or lesser extent the personal characteristics of the offender.”

[48] The facts of each case may vary significantly. It is therefore unwise to set rigid guidelines as a sentencing judge should have discretion to achieve an appropriate sentence taking into account the particular circumstances, aggravation and mitigation, the need for deterrence and in this case the catalogue of offences. The trial judge applied three different starting points and grouped offences together. We cannot see anything wrong with that approach in principle. He effectively started with 30 months for the assault occasioning actual bodily harm, 24 months for five common assaults and 12 months for the remaining assaults, the attempted criminal damage and possession of the knife. Alternatively, he could have settled on one figure to reflect all of the offences. Either way we consider that a sentence before discount for the plea should have been in the region of five years. A discount of 25% was appropriate in this case and so the appropriate sentence was around or just under four years. The trial judge effectively started at five and a half years and reached a sentence just over four years after the plea. We consider that this is within range and not manifestly excessive.

[49] We do not consider that the sentence is out of line with the principle expressed in *R v Mandy O’Toole* [2016] NICA 59. That case considered the principle found in *R v Kennedy & Kennedy* [2011] NICA 42 which is that an accused person should not be “especially sentenced” because of exercising their right to go to the Crown Court. However, the application of the principle depends on the particular facts of a case. In *O’Toole* the court found that it was entirely proper for the case to be sent to the Crown Court. We consider that the same applies here due to the

nature of the offending and multiplicity of charges. Prosecutors must actively consider proceeding on indictment in cases concerning sustained domestic abuse to ensure that an appropriate sentence is imposed.

[50] We also find no merit in the subsidiary argument that the trial judge should have told counsel what he was thinking of in terms of sentence. Counsel had ample opportunity to address the appropriate sentencing range and made written and oral submissions. Counsel who appeared for the defence suggested a community disposal which to our mind was totally unrealistic. However, he was also aware of the sentencing proposed by the prosecution as he comments upon the cases of *Balmer* and *Ritchie* in his written submissions. In addition, counsel was afforded an additional opportunity to address the trial judge on whether a violent offenders order should be made. Ultimately, that order was not made. Therefore, the defence was placed at no disadvantage at all during the sentencing process and so this argument must fail.

[51] It will be apparent from what we have said that in future perpetrators of sustained domestic violence such as this can expect to obtain higher sentences for this type of offending. Such sentences are a reflection of the growing appreciation of the seriousness of this type of offending, the frequency of it within our society, the repetitive nature of it and the effects on victims. Higher sentencing reflects society's need to deter this type of behaviour and mark an abhorrence of it. There is also a need for the education of society in general, to understand that this behaviour is not normal, it should not be tolerated, and if it does occur it will result in significant sentences.

Conclusion

[52] Overall, we consider that this is a stiff sentence, however, in our view it properly reflects the sustained domestic violence that took place within this relationship. As such we do not consider that the overall sentence imposed on the appellant is manifestly excessive and so we will not interfere with it.