

Neutral Citation No. [2012] NICC 14

Ref:

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 25/04/12

ICOS NO. 11/109627

QUEEN

-v-

MATYAS PIS

HIS HONOUR JUDGE BURGESS

[1] The defendant has pleaded guilty to four offences; two counts of intentionally controlling the activities of another for the purposes of prostitution for gain contrary to Article 63 of the Sexual Offences (Northern Ireland) Order 2008; one count of assisting in the management of a brothel between 24 November 2010 and 22 March 2011, contrary to Article 64(1) of the Sexual Offences (Northern Ireland) Order 2008; and one count of trafficking two persons into the United Kingdom for the purposes of sexual exploitation, contrary to Section 57(1)(a) of the Sexual Offences Act 2003. The section 57 and article 63 offences are both serious and specified offences within schedules 1 and 2 of the Criminal Justice (NI) Order 2008, as amended by Schedule 1, paragraph 35 of the Sexual Offences (NI) Order 2008.

[2] The two women whom you are charged with trafficking are, like yourself, of Hungarian origin. Although there is no indication that they were brought into the United Kingdom or required to work in prostitution against their will, they are still victims of sexual offences. For this reason, they will be

referred to in this judgment as A and B, and media reporting of this case should not contain any details which would reveal their identities.

[3] This is the first time that the courts in Northern Ireland have had an opportunity to sentence someone for trafficking offences, and as the Presiding Judge at this court tier, I have been asked by the Lord Chief Justice's Sentencing Group to set out guidance for the courts until the Court of Appeal has had an opportunity to provide an authoritative guideline.

[4] Human trafficking is a global problem and we should not be blind to the fact that it is happening right now in Northern Ireland. Women, men and even children are being brought into this country, often against their will, for the purposes of economic and sexual exploitation. They are trafficked by individuals and gangs who give no thought to their suffering, but are solely motivated by their own financial gain.

[5] The agreed facts of this case, to which I will turn shortly, confirm that there is no allegation of coercion and corruption of unwilling victims which marks cases at the higher end of the sentencing range for these offences. However I want to take this opportunity to make it very clear that anyone who is brought before the courts in Northern Ireland for offences of this nature can, other than in exceptional circumstances, expect a custodial sentence. That sentence will be heavier for those who coerce their victims, who use violence against them, who sexually assault and degrade them and who placed them in fear for their own or their loved ones' lives.

Factual background

[6] These offences relate to two women, A and B. On three occasions, you arranged for A to enter the Republic of Ireland through Dublin Airport, for her to work as a prostitute in Belfast. These were in December 2010, January 2011 and March 2011. On the third occasion, you also made arrangements for B, who knew A, to come to Belfast through Dublin Airport to work as a prostitute. A and B say that they asked you to book their air tickets, and that you provided them with an apartment in Belfast. They paid you rent for the apartment in Belfast, and paid back their travelling expenses. On the third occasion, you drove A and B to Belfast in your car and they gave you money for petrol. The agreed facts do not indicate whether you received any further

financial recompense for your involvement and for that reason I cannot take this into account.

[7] The agreed statement of facts upon which you pleaded were that:

- (a) A and B were not brought into the country against their will;
- (b) No allegation is raised by either A or B that they were held against their will;
- (c) No allegation is raised that force or threat of force were made against them;
- (d) The timeframe for the alleged offences is approximately twelve weeks;
- (e) The prosecution accepts that you were not part of any criminal gang operating in Northern Ireland.

[8] You are a single man of 38 years of age from Hungary. You are well educated and have a formal qualification in catering skills. You came to Ireland in 2006, and with two friends, set up a restaurant in Dublin. Although you originally intended to return to Hungary, the opportunities for employment there were limited. The restaurant business which you ran in Ireland enabled you to have a comfortable standard of living and to send money home to support your parents. You have now lost that employment and your home in Ireland. You intend to return to Hungary when you are legally permitted to do so.

You did not plead guilty at your arraignment on the 27th October 2011, but were re-arraigned on the 1st December 2011 and pleaded guilty to all four counts. However the Statement of Facts records that from an early stage in your interviews that you made admissions and that a trial would not be necessary. I therefore give you substantial credit for your plea, and reduce the sentence that otherwise would have been imposed should you have chosen to contest the matters.

Sentencing guidelines

[9] The attitude of the Northern Ireland courts to guidelines from the Sentencing Council for England and Wales is well known. In Attorney General's Reference (No. 1 of 2008), Gibbons et al [2008] NICA 41 at paragraph [44], Kerr LCJ said:

“[44] As we have repeatedly made clear, the guidance provided by the Sentencing Guidelines Council must always be regarded as secondary to the guidelines provided by the Court of Appeal in this jurisdiction. There will be occasions where the guidelines accord with local experience in which case they may be followed but there will also be occasions where they should not be applied.”

The Sentencing Guidelines Council, now the Sentencing Council, issued a definitive guideline on offences within the Sexual Offences Act 2003, in April 2007. At Part 6 C & D it considered appropriate sentences for offences involving the exploitation of prostitution and trafficking. As this is the first occasion on which a sentencer in this jurisdiction has considered these sentences, I have given careful consideration to the opinion of the Sentencing Guidelines Council, and I can see no reason why these offences, which take place in an international context, should attract different sentences in Northern Ireland to those in place in other parts of the United Kingdom. For that reason, I propose to base my sentencing on the Sentencing Council guideline.

Causing prostitution and controlling for prostitution

[10] Part 6C of the guideline enjoins me to take into account the following factors in relation to the offence of controlling for prostitution, and the offences of causing or inciting prostitution for gain, to which this guideline also applies:

“Factors to take into consideration:

1. The sentences for public protection *must* be considered in all cases. They are designed to

ensure that sexual offenders are not released into the community if they present a significant risk of serious harm.

2. The degree of coercion, both in terms of recruitment and subsequent control of a prostitute's activities, is highly relevant to sentencing.
3. The degree to which a victim is exploited or controlled, the harm suffered as a result, the level of involvement of the offender, the scale of the operation and the timescale over which it has been run will all be relevant in terms of assessing the seriousness of the offence.
4. Where an offender has profited from his or her involvement in the prostitution of others, the courts should always consider making a confiscation order approximately equivalent to the profits enjoyed.
5. The presence of any of the general aggravating factors identified in the Council guideline on seriousness or any of the additional factors identified in the guidelines will indicate a sentence above the normal starting point.
6. Where there is evidence that an offender convicted of an exploitation of prostitution offence is not actively involved in the coercion or control of the victim(s), that he or she acted through fear or intimidation and that he or she is trying to exit prostitution, the courts may wish to consider whether, in the particular circumstances of the case, this should mitigate sentence.

7. The starting points are the same whether prostitution was caused or incited and whether or not the incited activity took place. Where the offence was incited, the sentencer should begin from the starting point that the offence was incited, taking account of the nature of the harm that would have been caused had the offence taken place and calculating the final sentence to reflect that no actual harm was occasioned to the victim, but being mindful that the intended victim may have suffered as a result of knowing or believing the offence would take place.
8. The starting point for the exploitation of prostitution offences where an offender's involvement was minimal, and he or she has not actively engaged in the coercion or control of those engaged in prostitution, is a non-custodial sentence.
9. A fine may be more appropriate for very minimal involvement.
10. Where an offender has profited from his or her involvement in the prostitution of others, the court should consider making a confiscation order approximately equivalent to the profits enjoyed."

[11] For the offence of controlling prostitution for gain, with which you are charged, and the offences of causing or inciting prostitution for gain, to which this guideline also applies, there is a maximum penalty of seven years, and the Sentencing Council suggests starting points and ranges as set out in the table below:

	Starting points	Sentencing ranges
--	-----------------	-------------------

Type/nature of activity		
Evidence of physical and/or mental coercion	3 years custody	2-5 years custody
No coercion or corruption, but the offender is closely involved in the victim's prostitution	12 months custody	26 weeks-2 years custody
No evidence that the victim was physically coerced or corrupted, and the involvement of the offender was minimal	Community order	An appropriate non-custodial sentence

[12] The guideline also suggests that in addition to general aggravating factors, the specific aggravation relevant to these offences is:

- (1) Background of threats, intimidation or coercion.
- (2) Large-scale commercial operation.
- (3) Substantial gain (in the region of £5,000 and upwards).
- (4) Use of drugs, alcohol or other substance to secure the victim's compliance.
- (5) Induced dependency on drugs.
- (6) Abduction or detention.
- (7) Threats to prevent the victim reporting the activity.
- (8) Threats to disclose victim's activity to friends or relatives.

[13] The only specific mitigating factor for these offences is stated to be that the offender is also being controlled in prostitution and is subject to threats or intimidation.

[14] The main reported case on controlling prostitution for gain is that of R v Thomas Joseph Carroll [2010] EWCA Crim. 2463, which dealt with a large-scale prostitution business with some 35 brothels in several Irish towns, controlled by the defendant by telephone from Wales, and with around €864,000 transferred into his account in a 16 month period. His wilful blindness to the risk of coercion of the prostitutes working for him and the fact that he had moved to Wales to carry on his business while on bail for similar offences in Ireland were further aggravating factors. A sentence of five years imprisonment was imposed.

Brothel-keeping

[15] In relation to keeping a brothel used for prostitution, the Sentencing Council states that the following are the factors to be taken into account:

- “1. The sentences for public protection *must* be considered in all cases. They are designed to ensure that sexual offenders are not released into the community if they present a significant risk of serious harm.
2. The offence covers anyone who keeps, manages or acts or assists in the management of a brothel. The degree of coercion, both in terms of recruitment and subsequent control of a prostitute’s activities, is highly relevant to sentencing.
3. The degree to which a victim is exploited or controlled, the harm suffered as a result, the level of involvement of the offender, the scale of the operation and the timescale over which it has been run will all be relevant in terms of assessing the seriousness of the offence.
4. The presence of any of the general aggravating factors identified in the Council guideline on seriousness or any of the additional

factors identified in the guidelines will indicate a sentence above the normal starting point.

5. Where there is evidence that an offender convicted of an exploitation of prostitution offence is not actively involved in the coercion or control of the victim(s), that he or she acted through fear or intimidation and that he or she is trying to exit prostitution, the courts may wish to consider whether, in the particular circumstances of the case, this should mitigate sentence.

6. The starting points are the same whether prostitution was caused or incited and whether or not the incited activity took place. Where the offence was incited, the sentencer should begin from the starting point that the offence was incited, taking account of the nature of the harm that would have been caused had the offence taken place and calculating the final sentence to reflect that no actual harm was occasioned to the victim, but being mindful that the intended victim may have suffered as a result of knowing or believing the offence would take place.

7. A non-custodial sentence may be appropriate for very minimal involvement.

8. Where an offender has profited from his or her involvement in the prostitution of others, the courts should always consider making a confiscation order approximately equivalent to the profits enjoyed.”

[16] The maximum penalty for this offence is again seven years, and the starting points and ranges indicated by the Sentencing Council are as set out below:

Type/nature of activity	Starting points	Sentencing ranges
-------------------------	-----------------	-------------------

Offender is the keeper of a brothel and has made substantial profits in the region of £5000 and upwards	2 years custody	1-4 years custody
Offender is the keeper of the brothel and is personally involved in its management	12 months custody	26 weeks-2 years custody
Involvement of the offender was minimal	Community order	An appropriate non-custodial sentence*

[17] The specific aggravating factors mentioned in the Sentencing Guideline are:

- (1) Background of threats, intimidation or coercion.
- (2) Large-scale commercial operation.
- (3) Personal involvement in the prostitution of others.
- (4) Abduction or detention.
- (5) Financial or other gain.

[18] The specific mitigating factors are:

- (1) Using employment as a route out of prostitution and not actively involved in exploitation.
- (2) Coercion by a third party.

[19] There are a number of relevant cases from the English Court of Appeal. R v Mei Lia Chen [2007] EWCA Crim. 1791 predates the 2007 sentencing guideline. The appellant, who had been working as a prostitute, began to manage the business for her landlord. The court reduced a sentence of 18 months to one of 4 months, indicating that where there is no evidence of coercion or corruption, the sentence will normally not exceed a matter of a few months. This case must now be read in the light of subsequent cases, in

particular the dictum in R v Peiwen Shi and Li Yang [2008] EWCA Crim. 1930 to which I refer below, and current sentences must be seen as having a higher starting point.

[20] In R v Chunxia Bao [2007] EWCA Crim. 2781, the appellant managed a legitimate hairdressing salon and a brothel on the same premises. Two employees offered sexual services from the brothel. There was no coercion or corruption, and the women were not underage. The appellant had one previous conviction. Both businesses together had made a significant profit, and over £30,000 had been spent on advertising. On the facts of the case, a sentence of 18 months was reduced to 12 months imprisonment.

[21] In R v Peiwen Shi and Li Yang [2008] EWCA Crim. 1930, sentences of 21 months and 15 months imprisonment for keeping a brothel over a period of several months were reduced to 16 months and 10 months imprisonment respectively, following a plea of guilty. The appellants rented a single property, and placed advertisements in local newspapers offering personal services. £6,000 was paid in respect of rent and other expenditures, there was evidence of girls being taken from a railway station to a brothel, and officers visiting the premises were introduced to a prostitute. There was no background of coercion or threats, but the sentencing judge noted that while the Sentencing Council guidelines were guidelines they were not a rigid formula. The case is significant for the observation that that the Pre-Sentencing Council guideline cases on sexual offences related to the old offence of keeping a brothel, which was subject to a maximum sentence of 6 months, while the maximum sentence under the Sexual Offences Act 2003 was 7 years. The court also observed that it could see nothing wrong with making a recommendation for deportation in the case of an offender of previous good character where the offences were serious and of a deliberate nature.

[22] In R v Baker and Griffiths [2008] EWCA Crim. 274, the appellants ran three brothels in different towns over a period of about 8 months. There was no coercion or corruption of the women who worked there, who were professional prostitutes. The appellants rented the premises, paid for advertising, and bought condoms. They met the prostitutes from railway stations and took them to the premises. They charged the prostitutes approximately double the market rent for the properties. The operation was

relatively unsophisticated and small scale. Following pleas of guilty, sentences of 18 months imprisonment were reduced to 9 months in the case of the first appellant and 5 months in the case of a second appellant.

Trafficking into the United Kingdom

[23] Part 6D of the Guideline on Sexual Offences deals with trafficking for sexual exploitation. It sets out the following as the factors to take into consideration:

- “1. The sentences for public protection *must* be considered in all cases. They are designed to ensure that sexual offenders are not released into the community if they present a significant risk of serious harm.
2. The type of activity covered by the various trafficking offences in the SOA 2003 is broadly the same, the only difference being the geographical area within which the trafficked persons are moved. The harm being addressed is sexual exploitation, but here either children or adults may be involved as victims.
3. The offences are designed to cover anyone involved in any stage of the trafficking operation, whether or not there is evidence of gain. This is serious offending behaviour, which society as a whole finds repugnant, and a financial or community penalty would rarely be an appropriate disposal.
4. The degree of coercion used and the level of control over the trafficked person’s liberty will be relevant to assessing the seriousness of the offender’s behaviour. The nature of the sexual exploitation to which the victim is exposed will also be relevant, as will the victim’s age and vulnerability.

5. In general terms the greater the level of involvement, the more serious the crime. Those at the top of an organised trafficking chain may have very little personal involvement with day-to-day operations and may have no knowledge at all of individual victims. However, being in control of a money-making operation that is based on the degradation, exploitation and abuse of vulnerable people may be equally, if not more, serious than the actions of an individual who is personally involved at an operational level.

6. The presence of any of the general aggravating factors identified in the Council guideline on seriousness or any of the additional factors identified in the guidelines will indicate a sentence above the normal starting point.

7. Circumstances such as the fact that the offender is also a victim of trafficking and that their actions were governed by fear could be a mitigating factor if not accepted as a defence.

8. The starting point for sentencing for offences of trafficking for sexual exploitation should be a custodial sentence. Aggravating factors such as participation in a large-scale commercial enterprise involving a high degree of planning, organisation or sophistication, financial or other gain, and the coercion and vulnerability of victims should move sentences towards the maximum 14 years.

9. In cases where a number of children are involved, consecutive sentences may be appropriate, leading to cumulative sentences significantly higher than the suggested starting points for individual offences.

10. Where an offender has profited from his or her involvement in the prostitution of others, the court should consider making a confiscation

order approximately equivalent to the profits enjoyed.

11. The court may order the forfeiture of a vehicle used, or intended to be used, in connection with the offence (Sexual Offences Act 2003, s.60A as inserted by the Violent Crime Reduction Act 2006, s.54 and schedule 4)."

[24] The Sentencing Guideline sets out the follow starting points and ranges for the offences:

Type/nature of activity	Starting point	Sentencing range
Involvement at any level in any stage of the trafficking operation where the victim was coerced	6 years custody	4–9 years custody
Involvement at any level in any stage of the trafficking operation where there was no coercion of the victim	2 years custody	1–4 years custody

[25] The Sentencing Guideline sets out the following as specific aggravating factors for the offence of trafficking:

- (1) Large-scale commercial operation.
- (2) High degree of planning or sophistication.
- (3) Large number of people trafficked.
- (4) Substantial financial (in the region of £5000 and upwards or other gain.
- (5) Fraud.
- (6) Financial extortion of the victim.
- (7) Deception.

- (8) Use of force, threats of force or other forms of coercion.
- (9) Threats against victim or members of victim's family.
- (10) Abduction or detention.
- (11) Restriction of victim's liberty.
- (12) Inhumane treatment.
- (13) Confiscation of victim's passport.

[26] The Sentencing Guideline sets out the following as mitigation:

- (1) Coercion of the offender by a third party.
- (2) No evidence of personal gain.
- (3) Limited involvement.

[27] Many cases of trafficking involve significant coercion, corruption and violence against unwilling victims. Even before the guideline came into force, these offences attracted condign sentences. In R v Shaban Maka [2005] EWCA Crim. 3365, a horrific but sadly not exceptional case involving a single under-age victim, the defendant received a sentence of eighteen years and was recommended for deportation.

[28] Even where there is no coercion, the facts of cases can vary dramatically. Attorney General's Reference No. 129 and 132 of 2006 (Elisabeth Delgado-Fernandez and Gowin Zammit) [2007] EWCA Crim. 762, involved a large-scale and professional operation to enable women from Spain, South America and Eastern Europe to enter the United Kingdom to work as prostitutes. Once in the United Kingdom, the offenders, who were actively involved in every stage of the trafficking and prostitution operation, controlled their work and received 60% of their earnings, from which they paid substantial expenses. Sentences of five years and seven years imprisonment on a plea of guilty were imposed.

[29] More similar to the present case is that of R v Atilla Makai [2007] EWCA Crim. 1652, where the leading authorities were considered. The appellant arranged for women to enter the United Kingdom to work as prostitutes, knowing that they would do so, but was not involved in controlling their work as prostitutes. He actively recruited Hungarian woman to come to the United Kingdom to work as prostitutes. The woman contacted his co-defendant. They bought their own air tickets, and were met on arrival by Makai, who passed them on to other men who were involved in brothels. For this he was provided with a fee. The indictment related to two girls. The prosecution accepted that they would have known that they were being recruited to work as prostitutes. He pleaded guilty on the basis that the women were above the age of consent, had entered the United Kingdom legally and of their own free will on the understanding that they would be working as prostitutes. His role was limited to introducing the women to others who would place them in brothels. He pleaded guilty. A sentence of 40 months was reduced to 30 months by the Court of Appeal.

'Dangerousness' in this case

[30] I have considered the probation report in your case, and concur with the view of the probation officer that, although there is a medium risk of you re-offending, you do not pose a significant risk to members of the public of serious harm occasioned by the commission by you of further serious or specified offences, within Articles 12 to 15 of the Criminal Justice (Northern Ireland) Order 2008. For that reason, an extended custodial sentence or an indeterminate custodial sentence would be inappropriate in your case.

Sentencing in this case

[31] The main factor of those enumerated in the sentencing guideline which is relevant in your case is that there was no coercion or active control of the victims. That is not to say that, although A and B appeared to be acting as free agents, your involvement in their prostitution in Belfast was minimal. This was your apartment. You booked their flights. You picked them up at the airport. It was to you that they paid the rent for their apartment, and to you that they returned the keys. Therefore although they were not coerced or corrupted by you, you were closely involved in their prostitution. For this reason, I find that the custody threshold has been passed. A starting point of 2

years on the trafficking offence and of 12 months on each of the other two offences is entirely appropriate in your case.

[32] The aggravating factors relate to the brothel-keeping charge, and these are the level of your personal involvement and the level of your financial gain. There are no specific mitigating factors.

[33] In relation to trafficking, I note that the remark of the Sentencing Council that:

“This is a serious offending behaviour, which society as a whole finds repugnant and a financial or community penalty would rarely be an appropriate disposal”.

The starting point for trafficking where there is no coercion is 2 years custody, with a sentencing range of 1-4 years custody. There are no specific aggravating factors in relation to the trafficking offence. Your involvement in these offences was comparable, although arguably somewhat greater than that of the defendant in Atila Makai.

[34] In addressing the totality of your involvement in this matter I have taken into account your previous good character and your plea to which I have referred. I also consider that this is one course of offending comprising a number of aspects of this unacceptable trade. Therefore I have addressed the principle of totality and will make sentences for some of the counts concurrent to reflect the effective determinate sentence I intend to impose.

[35] I impose a sentence under the Criminal Justice (Northern Ireland) Order 2008 of 3 years imprisonment divided as to 18 months imprisonment and 18 months on licence in relation to Count 1, the trafficking charge; of 2 years divided as to 12 months imprisonment and 12 months licence in relation to Counts 2 and 3, the two controlling prostitution charges, concurrent to each other and to Count 1; and 18 months divided as to 9 months custody and 9 months licence, concurrent to the other sentences.

[36] I make no order for forfeiture of your car and make no recommendation as regards deportation.

[37] As I have indicated, this is a case which does not involve coercion. However that is not to say that this is not a serious case. Any case involving the trafficking of other human beings is a serious case and will merit a sentence which is proportionate to the offending and is a genuine and real deterrent.