CPS v Newcastle Upon Tyne Youth Court, AC, 23 July 2010

The defendant, a short time before he turned 18 years of age raped another. The DJ found no aggravating factors (readers may wish to take a look at paragraphs 2 and 3 in particular), and also appeared swayed by the fact that the parties had been in a previous relationship (the fact that D had also intimidated the new partner of the victim appears to have been lost on the court as well). The court accepted jurisdiction.

The court, in refusing to quash the decision (due to delay and the fact that the defendant had by now turned 18) said this:

it was in my view not open to the District Judge to take the approach which he did in determining, in effect, as I read the record of what was said, as though the decision was one for him there and then to determine what he as a sentencer would have done, rather than to ask what another sentencer in the Crown Court might have concluded on the facts was appropriate. What was demanded was a sense of range, a sense of the possibility of a sentence being beyond the powers of the youth Court. The possibility must be tempered with realism but it seems to me that a member of the public would regard as unacceptable or close to it any suggestion that for a rape committed by an 18 year old there could be no realistic prospect of a sentence beyond that maximum which the Youth Court could impose...

Accordingly, as it seems to me, the District Judge took the wrong approach. He should not have asked what sentence was likely. He should have asked what sentence was realistically possible bearing in mind the range. He should not, as he appears to have done, taken every feature which bore on the level of sentence at its most favourable to the defendant. That might ultimately be a conclusion of the court but it could not be said there was no real prospect that a court's decision might be otherwise.

The CPS came in for some criticism as well:

I agree with my Lord for the reasons he has given that, but for the regrettable subsequent conduct of the Crown Prosecution Service, this is a case in which the decision -- I have to say plainly the unduly lenient decision -- of the District Judge could not stand. However, for the reasons my Lord has given, and because of the regrettable train of subsequent events, it would not be right for us to take the course thereby indicated. It will not escape notice that the practical consequence of our decision is that MP may be thought to have had a lucky escape and, moreover, in circumstances where the cause of his good fortune is the regrettable conduct of the Crown Prosecution Service.

It is not for this court to instruct the Director of Public Prosecutions as to how the Crown Prosecution Service should be organised and managed. It is certainly not for this court to proffer advice or suggestion as to how the procedures might best be adopted or adapted to ensure that the twin requirements of the public interest and the promptness of any applications to this court are best to be achieved. But I have to say that I viewed with dismay when I first read Mr Parkin's very full and frank account, and I continue to view with very considerable dismay, the internal procedures which had the consequence that it took five weeks to launch the proceedings in a case in which, in my judgment, the proceedings could -- and if they could, therefore should -- have been launched within a matter of days. The unhappy consequence, as I have already pointed out, is that the reason why in agreement with my Lord I accept that it would not be right to quash the albeit erroneous decision of the District Judge is because MP has suffered the prejudice my Lord has described as a result or in consequence of that period of delay.