[2002] QCA 278

COURT OF APPEAL

DAVIES JA
McPHERSON JA
WILLIAMS JA

CA No 112 of 2002

THE QUEEN

v.

ROY WILLIAM READING Respondent

and

ATTORNEY-GENERAL OF QUEENSLAND Appellant

BRISBANE

..DATE 31/07/2002

JUDGMENT

DAVIES JA: Mr Justice McPherson will deliver his reasons first.

McPHERSON JA: This is an appeal by the Attorney-General against the inadequacy of sentences imposed in the District Court. The respondent was convicted on pleas of guilty to a total of 19 counts of sexual offences contrary to the Criminal Code, section 210(1)(b) (unlawfully procuring a child under 16 years to commit an indecent act) and section 229B of the Code (maintaining an unlawful relationship of a sexual nature with a child under the age of 16 years).

There were in all 16 counts of procuring a child to commit an indecent act involving girls under 16 years and three counts of maintaining a sexual relationship with girls under that age. Altogether five different girls were involved, one of them aged only 10, another 11, the third 12, fourth 13 and the fifth 14 years old.

The learned sentencing Judge imposed an effective sentence of 3 years' imprisonment in respect of the maintaining charges and 12 months' imprisonment in respect of each of the indecent acts. The sentences were ordered to be served concurrently, but her Honour recommended that the respondent be considered for parole after he had served 12 months of the concurrent sentences.

The circumstances of the offences can be briefly summarised as follows. They occurred over a four to five month period between June and December 2001. The offences were committed in the bedroom and the bathroom of the unit in which the respondent resided in Cairns. The girls were paid by him to masturbate him, doing so either individually or in a group of several of them at a time. He later asked the girls to come individually so that it would not cost him so much money. He paid them some $20 each in respect of their masturbating him and doing other acts of this kind.

The 11 year old would telephone him to see if he was home and, if he was, the girls would go to his unit and head straight for the bedroom or the bathroom and engage in this conduct with him. They came twice or perhaps three times a week for the purpose of earning money in this way. On occasions the offence took place in the bathroom with him in the shower. They soaped him and played with his testicles, as well as masturbating him, on occasions putting fingers in his anus in order to stimulate an ejaculation.

The offences came to light through an interview with one of the girls by the Juvenile Aid Bureau, in which she described her and the others' conduct in going to the respondent's home and masturbating him in return for money. The respondent did not go to the police station voluntarily but was arrested. He participated in an interview in which he disclosed fully what had been happening. He appears to have shown little real

remorse for what he had done but gave his statements in a very matter of fact way. He said he knew it was wrong to pay the children to masturbate him and touch his penis and his testicles; but he did not feel so bad, he said, because one of the little girls had already been abused by another person. He also mentioned that this type of activity occurred in other Asian countries and he appears not to have felt any particular remorse for what he had done.

It is in his favour that the offence involved no violence, or threat of violence, and also, unlike some other cases of this kind which we have been referred to, the respondent never touched the girls or their person in any way. He said he was, at first, just happy to see the girls for their company; but once the offending conduct started, he said (and I quote it only to show his evident lack of remorse) "a standing prick has no conscience".

The personal circumstances of the applicant are that he was aged 69 years at the time of these offences. His only prior criminal conduct has consisted of two drink driving offences, one committed in 1980 and one in 1983. He appears by what he said to have had a good work record. He starting working at a very early age and has engaged in various forms of employment eventually working at Mount Isa Mines, from which he retired in the year 2000. He is now a pensioner.

It was submitted on his behalf at the sentence hearing that there was reason to suppose that the respondent was suffering

from depression at the time these offences were committed. No psychiatric material was placed before the Court in support of that submission; but it is the fact that the respondent has had the misfortune in the course of his lifetime to lose two wives and three children. One of the wives was killed not long ago in a plane crash, and the children have died in various misfortunes, such as a drowning in one case, a suicide and a shooting accident.

The applicant has a number of surviving children, one or more of whom seems to be supportive of him. He has a drinking problem, which may be partly responsible for what has happened and which he claimed had eroded his "moral fibre". His full and frank disclosures helped to resolve the case quickly, and he pleaded guilty to an ex officio indictment shortly after having undergone the interview with the police. He suffers from chronic sinusitis, arthritis and rheumatism and has had a significant fusion of his spine involving the fusing of four joints in his neck.

There is, as everyone appears to be agreed, no comparable case precisely in point. There seldom is in the case of sentencing matters like this. I accept that The Queen v. Trost (CA 396 of 1995) is in many respects a more serious instance of conduct of this kind because it involved digital penetration of the vagina of at least one of the complainants causing her to bleed. The victims in that case were, it should also be said, grandchildren of the offender, and elements of breach of trust therefore entered into the sentencing. The penalty

imposed in that case was imprisonment for five and a half years with a recommendation for release on parole, which was varied on appeal, to take effect after two years.

It is, I think, right to say that the offender in that case was perhaps fortunate not to receive, or so I think, a heavier sentence for what he had done. The present case, in my view, more closely resembles The Queen v. Bennetto (CA 367 of 1997). The offender in that instance was 59 years old. He pleaded guilty to 58 counts of indecent dealing, as well as exposing his child victims to indecent photographs, and so on, committed against eight children, six of whom were under 12 years of age. That suggests that the offending was more serious than this; but it is necessary to look more closely at what was involved in the 58 counts charged in that case. In the course of recounting the facts in Bennetto the Court said (at page 2):

> "It is to be noted that the indictment has been drawn so that a single episode might result in several counts such as, for example, by charging undressing as one act and touching a complainant as another."

This procedure, the Court went on to say -

> "is, of course, perfectly proper but it should be borne in mind, lest the reference to 58 counts gives an impression of more extensive activity than, in fact, occurred."

There was, however, it should be noticed in that case some touching by the offender of complainants, which is an element that I have already said is absent from this case. The Court of Appeal reduced the head sentence in that instance from the eight years imposed to six years, with a recommendation for parole after two and a half years.

It is obvious that the most serious feature of the offences in the present case is the respondent's conduct in paying these young girls for performing this revolting behaviour, and so, as I see it, introducing them to the idea of earning money in return for sexual services. That is a corrupting form of conduct that society cannot condone in the case of girls as young as these.

All matters considered, the comparison with Bennetto is, I consider, about as close as one can expect to find in matters of this kind.

It is also relevant to observe that the maximum for the offence of maintaining a sexual relationship charged here is now 14 years' imprisonment, and for the other form of offence it is 10 years. Those sentencing maximums have been doubled since the time of Bennetto. When in this case her Honour inquired about that matter in the course of the sentencing hearing, she was told, incorrectly as it turns out, that the sentencing maximum had remained the same since 1995 suggesting that Bennetto would have been decided under the same statutory sentencing regime. That may very well have misled her; but, whether or not it did, the fact is that Bennetto was decided at a time when the maximum terms of imprisonment that could be imposed as the maximum in a case like this were then less by half than they are now.

In the result, I have come to the conclusion that the sentence imposed in the case of this offender was, as submitted by the

Attorney-General, inadequate. I would therefore increase the sentences on counts 5, 10 and 15 from 3 years to 5 years' imprisonment and alter the recommendation for parole to take effect only after the respondent has served two years' imprisonment.

In formal terms I think the order should be expressed as follows:

The appeal should be allowed by varying the sentence on each of counts 5, 10 and 15, so as to increase the sentence on those counts to 5 years in place of 3 years; and also by varying the parole recommendation so that it will take effect when the respondent has served two years, instead of 12 months, of the sentence imposed. All sentences are to be served concurrently.

DAVIES JA: I agree.

WILLIAMS JA: I agree.

DAVIES JA: The order is as proposed by Mr Justice McPherson.

---