

COURT OF APPEAL

McMURDO P
WILLIAMS JA
ATKINSON J

CA No 212 of 2002

THE QUEEN

v.

BRUCE VINCENT BELL

(Respondent)

and

ATTORNEY-GENERAL OF QUEENSLAND

(Appellant)

BRISBANE

..DATE 04/09/2002

JUDGMENT

THE PRESIDENT: Justice Williams will deliver his reasons first.

WILLIAMS JA: This is an appeal by the Attorney-General, against a sentence of 15 months' imprisonment, imposed upon the respondent, consequent to his pleading guilty to a charge of indecently dealing with an intellectually impaired person.

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The circumstances of the offence were not in dispute. The complainant was a 17 year old intellectually impaired girl, who at the material time, was in the care of the Department of Families Youth and Community Care.

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Through her supervisor, she became known to the respondent. The respondent and some others agreed to carry out some domestic cleaning work for an elderly lady; the complainant became aware of that and asked to also attend.

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In the course of carrying out the work during the day, the respondent grabbed the complainant and started kissing her. She pushed him away and made it clear that she was not interested in his advances.

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Arrangements had been made for the group of workers to sleep overnight at the residence. The respondent had been allocated what was described as an upstairs bedroom and other people were to sleep in other bedrooms.

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The complainant went to bed, turned off the light and at about 2.00 a.m. the respondent climbed into that bed, told her to roll over and face him. She said, "No." He then grabbed her and put his hand inside her clothing, undid her pyjama shirt, touched her on the breasts and then placed his fingers inside of her vagina.

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She made an immediate complaint to other residents of the house and was taken shortly thereafter for a medical examination by a Government medical officer. That doctor found a number of abrasions and bruises to the genital area.

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It is not necessary to detail the medical findings, but it would appear from them that there was a degree of forced rough handling of the complainant in the vaginal area.

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The respondent, as I said, pleaded guilty and he did not subject the complainant to the necessity of giving evidence at committal. It was a full hand up committal and, to that extent, it was said that the respondent had exhibited remorse.

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The respondent was aged 45 years at the time. He had a significant criminal history. Between 1975 and 1999, there were a number of convictions for driving offences, convictions for a variety of other offences, including housebreaking, wilful damage and assault, but of most significance for present purposes, is the fact that the respondent was convicted in the District Court at Ipswich on the 14th of July 1994 for the offence of rape. He was then ordered to be

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imprisoned for a period of five years. No details of that rape offence were placed before the learned sentencing Judge. Counsel for the prosecution before the learned sentencing Judge, submitted that in all the circumstances, the appropriate head sentence was three years' imprisonment, but in the light of the cooperation and the plea of guilty, it should be suspended after a period of some 12 months.

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Counsel for the respondent submitted that the head sentence might fall in the range of two and a half years to three years, suspended after a period of time. It is significant to note that both counsel on sentence submitted that the appropriate sentence was one which involved a head sentence suspended after a period of time.

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I should also record that the learned sentencing Judge was informed that the respondent was suffering from some depression, apparently traced back to a motor vehicle accident in 1978, but there was no medical report placed before the Court.

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Against that background, the learned sentencing Judge said, and I quote:

"Given the previous conviction for rape, my view is that it is not appropriate to suspend the sentence. The question then is how do I recognise your early plea of guilty and cooperation with the police and the fact that you have been suffering from depression and are on anti-depressant medication? In my view, a sentence of two and a half years is appropriate. It is unlikely that you would get parole if I made an early recommendation for parole, given your background and given the current attitude of the parole board, so what I propose to do is I am going to reduce that head sentence, to recognise the

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plea of guilty. Accordingly, you are sentenced to 15 months imprisonment."

Counsel for the respondent submitted that, in essence, the Attorney-General by this appeal was contending that it was inappropriate to reduce the head sentence for mitigating factors such as plea of guilty, cooperation with the authorities and the like. In my view, that is not the essence of the Attorney's appeal.

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There is no doubt that in appropriate cases it is permissible to reduce the head sentence because of mitigating factors, and it may also be, in a particular case, that there would be some further discounting by ordering that the head sentence, so determined, be suspended, or that there be a recommendation for early release on parole.

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In my view, the contention of the Attorney in this case is that the ultimate sentence of 15 months' imprisonment is outside the proper range of sentencing discretion. In my view, particularly bearing in mind the circumstances of this case that this was an intellectually impaired girl and the respondent had a previous conviction for rape, that is so.

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It therefore follows that this Court is entitled to interfere with the sentence on an Attorney's appeal. Bearing in mind the submissions made before the sentencing Judge that the appropriate approach was to suspend the sentence, I am of the view that, in the light of authorities such as *The Queen v.*

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Brown, CA 289 of 1995, a head sentence of three years was called for. That is particularly so when it is borne in mind that in 1997 the legislature increased the maximum penalty for this offence from three years to 10 years.

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Taking into account the plea of guilty and the other mitigating circumstances, it is appropriate, in my view, to suspend that sentence of three years, after 12 months. In the circumstances, I would fix the operational period, as a period of four years.

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I would therefore allow the appeal, set aside the sentence imposed at first instance and in lieu thereof, substitute a sentence of three years' imprisonment, suspended after 12 months, with an operational period of four years.

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There should also be a declaration that the respondent spent 180 days in pre-sentence custody, from the 19th of December 2001, to the 17th of June 2002 and that should be deemed time already served under the sentence.

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THE PRESIDENT: Credit must be given in the sentencing process for a timely plea of guilty. That credit can be either by way of a reduced head sentence, or by an appropriate recommendation for parole or by a suspension of the sentence earlier than otherwise. Sometimes it may be appropriate to both reduce the head sentence and give an earlier recommendation for parole, or an earlier suspension of the sentence, but the sentence imposed must be within the

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appropriate range. For the reasons given by Justice Williams, the sentence imposed here was too lenient in the light of the serious circumstances of the offence itself and the respondent's prior conviction for rape in 1994. I agree with the orders proposed by Justice Williams.

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ATKINSON J: I agree with the orders proposed, for the reasons given by the President and by Justice Williams.

THE PRESIDENT: Yes, the orders are as dictated by Justice Williams.

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