[2002] QCA 410

COURT OF APPEAL

DAVIES JA
JERRARD JA
HELMAN J

CA No 230 of 2002

THE QUEEN

v.

D Applicant

BRISBANE

..DATE 03/10/2002

JUDGMENT

APPLICANT conducted his own case

MR M D NICOLSON (instructed by the Director of Public Prosecutions (Queensland)) for the respondent

DAVIES JA: The applicant pleaded guilty in the District Court on 8 March 2000 to 14 offences of sexual misconduct with four children aged between 12 and 14 years of age. The first complainant was the applicant's stepdaughter, who was aged about 12 at the time of the first offence. There were six offences against this complainant, including indecent treatment, oral sex and maintaining a sexual relationship. The second complainant was the applicant's natural daughter, who was 14 when the first offence against her occurred. That was one of incest. He committed incest upon her twice. The third complainant was another natural daughter of the complainant. He committed incest on her on three occasions, commencing when she was 13 or 14. He also maintained a sexual relationship with her. The fourth complainant was a friend of one of his daughters, whom he raped. Some force was used in each case and the complainants, unsurprisingly, were unwilling participants. On a number of occasions the complainants kicked and struggled in an attempt to prevent the offences occurring.

The applicant was sentenced to 11 years imprisonment for the offence of rape, for each of the offences of incest and for each offence of maintaining a sexual relationship. He was sentenced to lesser terms for the offences of indecent treatment.

These sentences were also imposed on 8 March 2000 and this is an application dated 16 July 2002 for an extension of time within which to seek leave to appeal against sentence.

The applicant, in an extensive written outline, has attempted to explain his delay in making this application. In substance, he says that he suffered a minor stroke which caused lapses in memory and that he was assaulted in prison awaiting sentence which exacerbated his problem. No medical evidence has been produced to support his assertion. However, it is unnecessary to decide whether there has been a satisfactory explanation for the delay. That is because the sentence which was imposed was plainly not outside the appropriate range. Indeed it was a sentence contended for on his behalf by his own counsel.

The comparable cases show that this sentence imposed was comfortably within the appropriate range. The respondent's counsel referred us to three cases, R v. Krieger, CA No 13 of 1991, R v. H [2001] QCA 167 and R v. R [2000] QCA 279. Krieger was sentenced to 15 years imprisonment for offences of indecent dealing, two of sodomy, two of unlawful carnal knowledge and one of maintaining a sexual relationship with a complainant who was seven when the offences commenced. The relationship there lasted for four years. This Court held that the sentence was not outside the appropriate range.

H was sentenced to seven years imprisonment for offences over a 16 year period against three complainants, one his own

daughter aged between five and 15, a second his stepson aged between nine and 15 and a third, a neighbour's female child, aged between nine and 10. The offences included rape on a number of occasions and maintaining a sexual relationship with his daughter, sodomy of his stepson and rape of the neighbour's child. A sentence of 17 years imprisonment was held to be within range by this Court. That, it seems to me, was a much more serious case than this.

The third case, R v. R, was a case which, in my opinion, shows plainly that this sentence was not too high. R was sentenced to 11 years imprisonment for maintaining a sexual relationship with one child over a two and a half year period. The complainant was aged between nine and 11 and R was a friend of the complainant's mother. However, unlike the applicant here, he did have a previous criminal history which included rape and indecent assault. The offences in that case included indecent dealing, masturbating in front of the complainant, rape and oral sex. It can be seen from the number of offences in the present case, the seriousness of them and the duration of time over which they occurred that the cumulative effect of the offences in this case was much more serious than this, involving as it did four complainants including two of the applicant's natural children and extending over a period of eight years.

For that reason, in my opinion there is no prospect of success of an appeal against sentence and I would refuse the application for an extension of time.

JERRARD JA: I agree.

HELMAN J: I agree.

DAVIES JA: The application is refused.
