# SUPREME COURT OF QUEENSLAND

| | |
|---|---|
| CITATION: | *R v Vidovich* [2002] QCA 422 |
| PARTIES: | **R**<br>**v**<br>**VIDOVICH, Robert Zeljko**<br>(applicant) |
| FILE NO/S: | CA No 182 of 2002<br>DC No 246 of 2002<br>DC No 247 of 2002 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | Sentence Application |
| ORIGINATING COURT: | District Court at Southport |
| DELIVERED EXTEMPORE ON: | 10 October 2002 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 10 October 2002 |
| JUDGES: | McMurdo P, McPherson JA and Holmes J<br>Separate reasons for judgment of each member of the Court, each concurring as to the order made |
| ORDER: | **Application for leave to appeal against sentence dismissed** |
| CATCHWORDS: | CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATION TO REDUCE SENTENCE – WHEN REFUSED – OFFENCES AGAINST THE PERSON – where applicant convicted of 52 counts of stalking – where applicant seeks leave to appeal against sentences imposed – whether sentencing judge gave sufficient weight to the applicant's plea of guilty to an ex officio indictment and its effect in facilitating the administration of justice |
| COUNSEL: | J D Farmer for the applicant<br>M J Copley for the respondent |
| SOLICITORS: | Legal Aid Queensland for the applicant<br>Director of Public Prosecutions (Queensland) for the respondent |

HOLMES J: The applicant seeks leave to appeal against sentences imposed in respect of 37 counts of unlawful stalking

with a circumstance of aggravation and 15 counts of unlawful stalking simpliciter.

The applicant had pleaded guilty to an ex officio indictment charging him with the 52 counts on the 9th of May 2002 at the Southport District Court.

On counts 1 to 4 and 9, 26 to 28, 31, 35, 39, 41 to 43, 46 and 49 to 52, the applicant was sentenced to imprisonment for four years. On all of those counts the maximum penalty was five years, in respect of the first four because they occurred before amendment of the Criminal Code to increase the penalty, and the others because they involved stalking simpliciter.

In respect of all of the remaining counts he was sentenced to seven years imprisonment which was the maximum penalty, to be served concurrently. He was also sentenced to a month's imprisonment in respect of one count of possession of tainted property.

He was recommended for post prison community based release after serving three years of his sentence. Two hundred and thirty-three days were declared as pre-sentence custody and an order was made restraining him from having contact with any of the complainants for 10 years.

The applicant was born on 23 August 1959 and was aged between 38 and 42 years over the various times of the offences. The stalking offences to which he pleaded guilty were committed

over a period of approximately three and a half years from April 1998 to September 2001.

There were 52 complainants ranging in age from 16 years to 83 years, most of them being aged between 35 and 50.

The conduct which constituted the offences is set out in a schedule contained in the appeal record book. The offences are too numerous to individually recount. Generally they involve the applicant telephoning women, most often at home, but also at work. The phone calls were made from public phones and motel rooms and many were commenced by the applicant claiming he'd received mail addressed to the women.

In the calls he proposed various forms of sexual activity in explicit and demeaning language. He threatened to rape the women the subject of three counts, and impliedly threatened to rape, or indecently assault many of the others.

He sent pornographic photographs to eight of the women depicting various sexual acts. The women in the photos looked like the recipients and captions accompanied the photos describing what the applicant wanted to do to the recipient.

From the conversations he had with some five of the women it was clear he had been spying on them. In one instance he first made contact with the complainant during her pregnancy. At the time of his last call five months later she was breast feeding at the time but not in public. During the call he

made reference to her nipples being full of milk. That is simply an example of circumstances in which it is clear that the applicant had some level of information about the victim.

The applicant attempted to conceal his identity by adopting accents when speaking to the complainants, using gloves when preparing the obscene material, disguising his handwriting, using an alias when booking into the motels in which he made the calls and calling from public phones.

He was arrested by police on the 28th of September 2001. In the course of their search the police found 800 pornographic files on his computer, some of which contained captions referring to some of the complainants and a phone list with 23 names on it.

With the exception of two complainants the applicant said the women were not known to him and that he'd selected them randomly from the phone book.

He claimed that he had been affected by marijuana while committing the offences. A Government medical officer provided a report pointing out that the degree of organisation in the offences was inconsistent with any form of cannabis induced psychosis. He said that the applicant's judgment might have been affected, but that had no bearing on his intent to commit the offences. The marijuana was probably used to enhance the pleasure to be derived from the offences.

The report of the psychologist tended on behalf of the applicant indicated that he suffered from no mental disorder, but exhibited a pattern of deviant behaviour which was likely to have been contributed to by his cannabis use. He had little insight into the lack of empathy for his victims, although accepting responsibility for the offences.

The applicant pleaded guilty to an ex officio indictment sparing the complainants the ordeal of a trial. When approached by the police he co-operated, giving a record of interview and identifying material on his computer.

The learned sentencing Judge took the view that, in the circumstances, that did not so much manifest remorse as a realisation that the game was up.

It should be noted, too, though, that by way of mitigation the applicant had a commendable work history and no criminal record.

Counsel for the applicant, Mr Farmer, did not argue with the imposition of the maximum penalty. Rather his proposition was that insufficient weight had been given to the applicant's plea of guilty to an ex officio indictment and its effect in facilitating the administration of justice.

The complainants were not required to give evidence and no brief of evidence had to be prepared by the police. That should have been reflected, he argued, by a recommendation for

parole at a period of between two and two and a half years. The recommendation which, in fact, was given, shortened the period before which parole could be considered by only six months.

It is certainly the case that co-operation of an applicant with authorities, particularly as exhibited in this case by a plea of guilty to an ex officio indictment, is a significant factor to be considered on sentence quite independent of any question of remorse.

But in the circumstances peculiar to this case, when one considers the sheer number of the offences and the fact that the learned sentencing Judge confined himself to imposing concurrent sentences, I am not convinced that further allowance in the form of a recommendation after a lesser period than that, in fact, given, was necessarily required.

Taken as a whole it seems to me that the sentence of seven years imprisonment with a recommendation after three years, in all the circumstances, including the possibility of imposition of cumulative sentences, was within a sound exercise of sentencing discretion.

I would dismiss the application for leave to appeal.

THE PRESIDENT: I agree.

McPHERSON JA: I also agree.

THE PRESIDENT: The application for leave to appeal against sentence is dismissed.

---