

SUPREME COURT OF QUEENSLAND

CITATION: *R v Hitchenson* [2002] QCA 434

PARTIES: **R**
v
HITCHENSON, David William
(appellant)

FILE NO/S: CA No 178 of 2002
DC No 44 of 2002

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction and Sentence

ORIGINATING COURT: District Court at Southport

DELIVERED EXTEMPORE ON: 16 October 2002

DELIVERED AT: Brisbane

HEARING DATE: 16 October 2002

JUDGES: McMurdo P, Davies JA and Cullinane J
Separate reasons for judgment of each member of the Court, each concurring as to the orders made.

ORDERS: **1. Appeal against conviction dismissed.**
2. Application for leave to appeal against sentence refused.

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – PLEAS – where accused convicted on pleas of guilty to two counts of procuring a child to commit an indecent act and two counts of indecent dealing with a child – whether the accused pleas of guilty entered in respect of the two counts of procuring a child to commit an indecent act were pleas entered of his own free choice

COUNSEL: The appellant appeared on his own behalf
MJ Copely for the respondent

SOLICITORS: The appellant appeared on his own behalf
Office of the Director of Public Prosecutions (Queensland)
for the respondent

THE PRESIDENT: Justice Cullinane will deliver his reasons first.

CULLINANE J: This is an appeal which, on the face of the notice of appeal, is an appeal against conviction and an application for leave to appeal against sentence.

Now the appellant was convicted on his pleas of guilty in the District Court at Southport on the 24th of April 2002 of two counts of procuring a child under 12 to commit an indecent act and two counts of indecently dealing with a child under 12. On each count he was sentenced to imprisonment for two and a half years. The application for leave to appeal against sentence was abandoned by the appellant here this morning.

The complainants were two sisters aged five and seven. The appellant was convicted of offences of procuring a child to commit an indecent act and indecent dealing with a child on each of the complainants. The conduct involved was the same in each case. The appellant touched each child on the vagina with his finger and had each child touch his penis.

Ultimately the only matter which the applicant has pursued here is the convictions on Counts 1 and 2. They are the counts of procuring a child under 12 to commit an indecent act. The appellant has asserted that he was not guilty of those offences and claims that he pleaded guilty only because he was, to use his words, encouraged very strongly to plead guilty.

There is before the Court an affidavit of counsel who represented the appellant. Exhibited to his affidavit are

written instructions to plead guilty and a copy of the indictment in which the appellant's signature appears beside each of the counts. There is no evidence before the Court which would suggest that the appellant pleaded guilty as anything other than the result of a free choice.

There is, in my view, no substance in the appeal and it should be dismissed.

THE PRESIDENT: I agree.

DAVIES JA: I agree.

THE PRESIDENT: The orders are the appeal against conviction is dismissed. The applications for leave to appeal against sentence are refused.
