SUPREME COURT OF QUEENSLAND

CITATION:	*R v Souter* [2002] QCA 516
PARTIES:	**R** v **SOUTER, Wayne Victor** (applicant)
FILE NO/S:	CA No 268 of 2002 DC No 111 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Southport
DELIVERED EXTEMPORE ON:	25 November 2002
DELIVERED AT:	Brisbane
HEARING DATE:	25 November 2002
JUDGES:	Davies and Williams JJA and Helman J 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 refused**
CATCHWORDS:	CRIMINAL LAW - APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION - APPEAL AND NEW TRIAL - APPEAL AGAINST SENTENCE - APPLICATIONS TO REDUCE SENTENCE - WHEN REFUSED - PARTICULAR OFFENCES - OFFENCES AGAINST THE PERSON - SEXUAL OFFENCES - where applicant pleaded guilty to offences arising from conduct over a period of eight and a half months - where sentenced to an effective to term of eight years imprisonment - whether the sentence imposed was manifestly excessive CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - JUDGMENT AND PUNISHMENT - FACTORS TO BE TAKEN INTO ACCOUNT - FACTUAL BASIS FOR SENTENCE - PLEA OF GUILTY AND USE OF DEPOSITIONS - where applicant pleaded guilty to offences arising from conduct over a period of eight and a half months - where sentenced to an effective to term of eight years imprisonment - whether the learned sentencing judge made an appropriate reduction in sentence for the guilty plea
COUNSEL:	A F Maher for applicant T A Fuller for respondent
SOLICITORS:	Forest Lake Lawyers for applicant Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: The applicant Wayne Victor Souter pleaded guilty in the District Court on 9 May 2002 to two counts of maintaining a sexual relationship with a child under 16 years with a circumstance of aggravation, four counts of sodomy and nine counts of indecent treatment of a child under 16 years with a circumstance of aggravation. The circumstance of aggravation in each of the nine counts of indecent treatment was that the child was in each case in his care and the circumstance of aggravation in the maintaining counts was that in the course of the relationship he sodomised the complainant.

On 1 August 2002, he was sentenced to an effective term of eight years imprisonment that being the term imposed on one of the two counts of maintaining a sexual relationship. On the other maintaining count he was sentenced to seven years imprisonment, he was sentenced to six years imprisonment in respect of each of the sodomy offences, he was sentenced to six years imprisonment on seven of the indecent treatment offences and he was sentenced to three years imprisonment in respect of the other two indecent treatment offences.

At the time of the commission of these offences the applicant was 37 and 38 years of age having been born on 11 July 1961. He had no relevant criminal history.

The complainants in all of the offences were two young boys aged 15 and 13 who were brothers. The elder of them had learning difficulties. The applicant was a friend of the

boys' parents who mistakenly entrusted them to his care, permitting them to stay overnight in his caravan. This arose, in the first place, because the elder boy obtained part-time employment at the store where the applicant worked. It was convenient for him on occasions to spend the night in the applicant's caravan near the store rather than to go home. He was the first to be subjected to the applicant's sexual advances.

On the first occasion the applicant instructed him to remove his shirt and he applied baby oil to the victim's chest. He then removed the child's pants and applied baby oil to his penis. He then masturbated the child to ejaculation. He then undressed himself and placed the child's hand on his penis asking him to reciprocate. The child declined, pulled his hand away and went and had a shower. As he emerged from the shower, the applicant pushed him back into the shower, soaped himself until his penis was erect, bent the child over and had anal intercourse with him. The child asked him to take him home at the conclusion of this incident but the applicant refused. He took the child home the next morning instructing him not to tell anyone what had occurred.

Two nights later the child stayed in the applicant's caravan again. On this occasion the applicant fellated him and required the child to fellate him. Subsequent acts of masturbation and anal intercourse also occurred. All of this occurred some time between November 1998 and January 1999.

Not content with corrupting the elder brother the applicant engaged in similar offences against his 13 year old brother. The first of these was some time over the Christmas holidays of 1998. It commenced with masturbation but quickly progressed to anal intercourse. His relationship with this complainant involved an estimated 40 acts of anal intercourse between December 1998 and March 1999. The applicant videorecorded one of these acts of anal intercourse.

As is often the case with offences of this kind, some time elapsed before either victim complained. Neither victim made any complaint until January 2001. When first accosted with these complaints the applicant declined to be interviewed. However it was later indicated on his behalf at committal that he would plead guilty and neither complainant was required to give evidence.

These were serious acts in which the applicant preyed on the vulnerability of young children in his care. There seems little doubt that he has caused enormous damage to both of them. The total conduct extended over a period of eight and a half months. Plainly he exploited both children as sexual objects.

The learned sentencing judge in imposing the sentence which she did appeared to express the view that, before taking into account the applicant's plea of guilty an appropriate sentence would have been eight to nine years imprisonment. She then reduced that to eight years imprisonment to take into account

the guilty plea. Unsurprisingly counsel for the applicant at the sentence hearing did not question the estimate of eight to nine years as the sentence which would have been appropriate but for the guilty plea, that being the range put up by counsel for the Crown. And counsel for the applicant in this Court, Mr Maher, submits that eight years before allowing for the guilty plea was appropriate as a sentence which should then be reduced and, on that basis, he has submitted that an appropriate reduction for the guilty plea would be to six years imprisonment or, alternatively, he submitted a recommendation for post prison community based release after serving three years.

Here there were persistent and degrading acts of anal rape, 40 of them in all, committed on vulnerable and defenceless young boys. Comparable cases show that for offences of this magnitude, absent a plea of guilty, a sentence of 11 or 12 years imprisonment would not have been outside the appropriate range. And in such cases, of course, a declaration that the offence was a serious violent offence would automatically follow. See, for example, R v. Herford (2001) 119 A Crim R 546 and R v. Simpson [1999] QCA 156; CA No 461 of 1998, 7 May 1999.

Once that is accepted the sentence imposed, after making allowance for the plea of guilty, in the circumstances of this case, was not, in my opinion, manifestly excessive. I would therefore refuse the application.

WILLIAMS JA: I agree.

HELMAN J: I agree.

DAVIES JA: The application is refused.
