QSC 001

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Department of Justice and Attorney-General

Transcript of Proceedings

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MACKENZIE J

No 11803 of 2002

DIRECTOR OF PUBLIC PROSECUTIONS — Applicant

and

DENNIS RAYMOND FERGUSON — Respondent

BRISBANE

..DATE 08/01/2003

ORDER

4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

HIS HONOUR: The threshold of the respondent being convicted on indictment of an offence of a sexual nature committed in relation to child under 16 is clearly in existence. The charges were heard before Judge C F McLoughlin of the District Court and Justice Derrington. When they sentenced him respectively for those offences, they formed most adverse opinions of him and his philosophy which seemed to be apparent at that time, despite what the Judges thought were his innate abilities to curb his activities.

If I may digress despite there having been digressions already today, it seems to me that this matter has developed in a most unsatisfactory way. I accept that in an application of this kind which is contested, it may well develop into a case where evidence has to be given. What I am really referring to, however, is the disorganised way in which it developed because of a number of factors.

Despite the suspicion that the respondent was planning to engage in further activities of the same kind as he had previously engaged in, it was not until Christmas Eve, with the problems inherent in the holiday period, that the application was brought. This was despite the fact that the respondent was serving a very long sentence.

ORDER

Much of the evidence, which was ultimately not relied on by the applicant, was in the form of unspecific hearsay. The problems encountered in the hearing were contributed to by this fact. The respondent correctly identified that a number of the matters referred to were not very satisfactorily raised in evidence.

The two prisoners' affidavits as to conversations which they had with the applicant, on their evidence, in the prison over periods of time were provided only at a late stage. The respondent had been refused Legal Aid, also at a late stage. He appeared for himself although he had been in contact - it emerged from his evidence - with a solicitor in Ipswich who was holding some of the documents that were referred to in a previous ruling.

The whole unsatisfactory situation was compounded by the fact that there is considerable public interest in having the matter disposed of today which happens to be the day before the respondent is released.

There was an application for an adjournment, which I deferred in effect to see how the matter developed. As it turned out, I am quite satisfied that the respondent said everything and probably more than counsel could have said on his behalf. He was familiar with a multitude of statutory

provisions and was able to conduct the case in a way which was indicative of the innate ability inherent referred to in the remarks of Judge McLoughlin and Justice Derrington.

It is important that this situation never happens again. But for the way matters turned out at a late stage it would have been necessary to seriously consider granting an adjournment to the respondent, notwithstanding the effect upon the public interest by having to do so.

The interests of justice would override the public interest if the two were in tension in a case where there had not been some satisfactory resolution that developed. The reasons for deciding to proceed to judgment are set out in the ruling concerning the application to call the psychologist, Dr Hazell. It was fortuitous that events turned out in a way that enabled the conflict between the public interest and the interests of justice to be resolved as it was. That may not always be the case if matters are approached in the way in which this one appears to have been.

Having said that, and hoping that it never develops in that way again, the critical evidence in the case was, in my view, the evidence of the two prison witnesses. I am very conscious of the caution that must be applied in dealing with witnesses of this kind because one is always

necessarily suspicious of what dynamics there might be. However, having heard them and the respondent, I am satisfied that I should prefer their evidence where it is in conflict with his.

On the basis of their evidence with some slight support from evidence such as the card and the cast of characters referred to in the business scheme, I am satisfied that, in terms of the section, a substantial risk exists that the offender will commit further offences of a sexual nature upon or in relation to a child under the age of 16, and I will make an order in the following terms: (1) that Dennis Raymond Ferguson report his current name and address to the officer in charge of police at Ipswich within 48 hours after being released from custody; and (2) thereafter for a period of 15 years report any change of name or address within 48 hours of the change taking place to the officer in charge of police at that place or at another place approved by the Commissioner of the Police Service. Nothing else?

MR MARTIN: No, thank you, your Honour.

RESPONDENT: Yes, your Honour. I'd like to apply for a - to appeal your judgment.

HIS HONOUR: You have to go to the Court of Appeal.

ORDER

RESPONDENT: I would like to apply for an arrest warrant and a suppression order.

HIS HONOUR: No, I do not propose to do that. What was your last, an arrest warrant?

RESPONDENT: An arrest warrant on your judgment being passed.

HIS HONOUR: No, I do not propose to either stay the judgment or make a suppression order. It is a matter of some public interest and as far as I am concerned, it should be allowed to be published without any constraints other than those that currently exist in the law.

RESPONDENT: Your Honour, if I left Queensland, does this apply out of Queensland?

HIS HONOUR: You can work that out for yourself. I will not give you legal advice.

RESPONDENT: No, I'm asking you-----

HIS HONOUR: I am not going to get into an argument and discussion about what your obligations are. Get legal advice on that.

ORDER

RESPONDENT: Does the Act apply out of Queensland?

Your Honour, can I have a copy of the transcript?

HIS HONOUR: You can have a copy of the judgment, yes.
