SUPREME COURT OF QUEENSLAND

CITATION:	*R v C; ex parte A-G(Qld)* [2003] QCA 510
PARTIES:	**R** v **C** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 328 of 2003 DC No 1730 of 2002 DC No 2009 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Appeal by A-G (Qld)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	13 November 2003
DELIVERED AT:	Brisbane
HEARING DATE:	13 November 2003
JUDGES:	de Jersey CJ, Davies JA and McMurdo J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed**
CATCHWORDS:	CRIMINAL LAW - APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION - APPEAL AGAINST SENTENCE - APPEAL BY ATTORNEY-GENERAL OR OTHER CROWN LAW OFFICER - APPLICATIONS TO INCREASE SENTENCE - OFFENCES AGAINST THE PERSON - where respondent pleaded guilty to 34 counts of indecent dealing involving 20 children - where respondent sentenced to three and a half years imprisonment to be suspended after 14 months for operational period of four years - where offences occurred between January 1973 and December 1981 - where respondent a priest - where respondent rehabilitated himself - where arrest and conviction caused respondent public disgrace - where respondent remorseful - where respondent rehabilitated himself - whether sentence manifestly inadequate *R v Wright* [1996] QCA 104; CA No 10 of 1996, 19 April 1996, distinguished
COUNSEL:	C W Heaton for appellant M J Byrne QC for respondent

SOLICITORS: Director of Public Prosecutions (Queensland) for appellant
Gilshenan & Luton for respondent

DAVIES JA: This is an appeal by the Attorney-General against sentences of three and a half years imprisonment, suspended after 14 months for an operational period of four years imposed in the District Court on 12 September 2003 for 34 counts of indecent dealing. All sentences were ordered to be served concurrently. The respondent was convicted on his own plea on 9 September 2003.

The offences occurred between January 1973 and December 1981 in a country town in Queensland when the respondent was serving as a parish priest. He was also associated with the school which was attached to his church.

As appears from what I have just said, the offences occurred over a period of about eight years. One of the victims was aged between four and six at the time of a single offence against her and one was aged between six and seven. The other victims were aged between eight and 12 years of age.

As the learned sentencing judge noted, the respondent was generally regarded highly in the community which he served during this period, including by the parents of the children whom he dealt with so shamefully. Although I would not wish to denigrate the good work which the respondent no doubt performed in that community, it is ironic that it was at least partly because of the high regard in which he was held by the parents of those children that he was able to commit the

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offences which he did. Each of his victims was the daughter of a parishioner.

I have already said that there were 34 offences. These involved 20 children. There were five offences on five distinct occasions against one girl, four offences on distinct occasions against another, three offences on distinct occasions in respect of each of two girls and in respect of five of the other girls two offences were committed on each of them on distinct occasions. The other offences were single offences. Some of the offences occurred whilst the respondent was hearing or giving instructions about confession, some were committed in the primary school which he attended from time to time and some were committed in the homes of his victims' parents. One was even committed at a wedding reception at which the victim was a flower girl.

Most of the offences were committed when the respondent had a young girl sitting on his lap or sitting beside him and either he rubbed her upper chest in the area of her breast, sometimes under her clothes; or he rubbed in the vicinity of her buttocks, on some occasions under her underpants. The most invasive conduct was on two occasions when there was digital penetration of a girl's vagina. He also, on many of these occasions, kissed the young girls on their lips, on some of these occasions trying to push his tongue into the girl's mouth and in fact doing so.

The offences as I have described them involved a gross betrayal of trust. The respondent used his emotional power over these young girls to achieve his own sexual gratification when they, and their parents, were entitled to expect from him exemplary moral character.

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Victim impact statements from two of the victims was tendered in court. These show that each of those victims has continuing psychological problems, many years after the offending incidents as a result of the respondent's predatory conduct.

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The respondent pleaded guilty and is now truly remorseful. However, when first confronted with the offending conduct he denied any sexual impropriety and explained the allegations made against him by reference to quite benign activity. This was in the year 2000, nearly 20 years after the commission of these offences. It is unclear precisely why they did not come to light before then but one reason appears to have been the continued position of authority which the respondent occupied in the community.

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However, the respondent must be given credit for his plea of guilty and the consequent avoidance of the unpleasant necessity of his victims having to give evidence in court. More important than that, in mitigation of a sentence imposed was the fact that the respondent in the intervening period appears to have rehabilitated himself. He has left the church and is now in a stable adult relationship. He served some

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time as a military chaplain and performed a good deal of humanitarian work. Dr Unwin, a psychiatrist who examined him, explained his retarded sexual development and was of opinion that his pattern of conduct was far removed from predatory paedophilic behaviour. Dr Unwin recognised that this is no way diminished the gravity of the offences but thought that it meant that in the future he would be most unlikely to re-offend.

The learned sentencing judge also took into account the respondent's otherwise good conduct and the evidence of support which he received from members of his community, even after they had knowledge of his offending conduct. That is no doubt of some relevance. However, as I have already mentioned, it was the otherwise good conduct which enabled him to perpetrate these offences without being detected.

There is one other matter relevant to sentence which I should mention. Because the respondent was a priest his arrest and conviction were publicly humiliating to him as indeed they should have been. But the public disgrace, deserved though it was, and its effect on him is of some relevance in considering whether the sentence imposed was inadequate.

The Attorney-General does not assert that the sentence of three and a half years imprisonment was inadequate. However he submits that it ought not to have been suspended after 14 months and that, when that suspension is taken into account, the sentence as a whole was manifestly inadequate. Ordinarily,

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a person sentenced to three and a half years imprisonment would be eligible for post-prison community based release after serving 21 months. The effect of the sentence, therefore, was to ensure certainty of release seven months earlier than that date.

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One other specific sentence was referred to by the learned sentencing judge and this was the principal sentence relied on by both parties in this appeal, that was *R v Wright* [1996] QCA 104; CA No 10 of 1996, 19 April 1996 which does have some similarities to the facts in this case.

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The applicant in that case who was also a priest pleaded guilty to 17 counts of indecency with children. Thirteen of those were of indecent treatment of girls under 12, four more in which the girl was under 16, three counts of gross indecency with a boy under 16 and another indecent assault on a young Aboriginal woman aged 18. The overall sentence which was imposed was one of three years. The applicant submitted to this Court that the sentence was manifestly excessive. The majority of this Court rejected that submission, Ambrose J dissenting. However it is plain that Pincus J, of the majority judges, thought that the sentence, although within appropriate range, was a high one.

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Most of the offences in that case occurred over a period of two years but one of them was committed seven years later. Although the number of offences in that case was fewer they were generally of a more invasive nature including rubbing his

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erect penis against the bodies of his victims and having them masturbate him. As in this case, his conduct had a lasting impact on his victims as appeared from victim impact statements and in one case a psychiatric report which showed that all four female complainants continued to suffer the effects of their experience.

In that case also, it seemed, the applicant was unlikely to re-offend, although a much shorter period had passed between the offences and sentence. The applicant had remained in the church, but was no longer employed as a parish priest. In other respects the facts in that case resemble those in this.

The principal differences, it seems to me, between that case and this, were that though there were fewer offences in that case they were of a more serious kind; and that in this case a longer time had elapsed between the commission of the last of the offences and the date of sentence thereby enabling the learned sentencing judge to be satisfied that what had occurred in the meantime, the services of the chaplain, the humanitarian work and in particular, the formation of a stable, adult relationship which is continuing, showed that the respondent here had rehabilitated himself.

These matters, in my opinion, justify the imposition of a slightly less severe sentence in this case than in that. Whether that is so or not, the effective difference between Wright's sentence and this one, is four months. That is, the difference between the time when Wright would have been

eligible for parole, 18 months, and the 14 months in this case.

The higher head sentence in this case, the three and a half years, reflects the higher maximum which now exists, that is seven years, instead of five years, in respect of some of these offences.

I think it was appropriate for the learned sentencing judge, in view of the respondent's rehabilitation and stable adult relationship, as well as to recognise the other mitigating factors to which I have referred, to moderate the sentence of three and a half years by suspending it after the respondent had served some part of it. And I cannot be satisfied that to have done so after 14 months, only four months difference between, as I have mentioned, the sentence imposed on Wright, rather than at some slightly longer period, rendered the sentence manifestly inadequate. For those reasons, I would dismiss the appeal.

THE CHIEF JUSTICE: I agree. While we are not hamstrung by the Crown's approach, it is ordinarily significant, as well as being helpful. Here the Crown effectively seeks on appeal a variation of the sentence, to ensure that the respondent serves seven months more than the 14 months he has to serve, in the context of a sentence of three and a half years' imprisonment. That would not usually on an Attorney's appeal, be considered a substantial increase, such as to warrant acceding to the appeal.

While we are not bound by the Crown's submission, we are effectively bound by the sentencing Judge's factual conclusions. In this case, they include, as the learned Judge put it in his sentencing remarks: "Given your long period of non offending and the certainty almost, so far as once can be certain, that this type of conduct will not be repeated", he had decided for suspension. Such a finding is unusual in cases like these and it is that finding which I believe substantially explains what the Crown now identifies as leniency.

McMURDO J: I agree with each of those reasons.

THE CHIEF JUSTICE: The appeal is dismissed.