SUPREME COURT OF QUEENSLAND

CITATION:	*R v Robbins* [2004] QCA 24
PARTIES:	**R** v **ROBBINS, Anthony** (applicant/appellant)
FILE NO/S:	CA No 339 of 2003 DC No 1174 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	11 February 2004
DELIVERED AT:	Brisbane
HEARING DATE:	11 February 2004
JUDGES:	de Jersey CJ, Davies JA and Mackenzie 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 - PARTICULAR OFFENCES - OFFENCES AGAINST THE PERSON - OTHER OFFENCES AGAINST THE PERSON - SEXUAL OFFENCES - BUGGERY AND INDECENT ASSAULT OR DEALING - GENERALLY - where appellant convicted of indecent dealing, attempted sodomy and sodomy against two boys - where appellant appealed conviction - whether conviction was unsafe and unsound
COUNSEL:	Appellant/applicant appeared on his own behalf R G Martin for respondent
SOLICITORS:	Appellant/applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for respondent

THE CHIEF JUSTICE: The application for leave to appeal against sentence is refused.

...

DAVIES JA: The appellant was convicted after a trial of 14 sexual offences against two young boys who were brothers. The most serious of these were three offences of sodomy to which he was sentenced to seven years imprisonment. There were also two offences of attempted sodomy on each of which he was sentenced to three and a half years imprisonment. All of the other offences were of indecent dealing to which he was sentenced to three years imprisonment. All offences were made concurrent.

He appeals against the convictions in respect of those offences. Chronologically the offences cover two periods. Counts 1 to 5 occurred between 16 April 1974 and 3 October 1975. However, one of the appellant's points in this appeal is that during most of this period he was in gaol. In fact he was in gaol for most of this period except in April-May 1974 and September-October 1975.

As that was common ground at the trial it may be assumed that the Crown undertook to prove that counts 1 to 5 occurred during one or other of those periods. The evidence appears to support this. K, who was the complainant in counts 1 to 5, which were of four indecent dealings and one attempted sodomy, said that counts 1, 2 and 3 occurred on the same occasion, and counts 4 and 5 on an occasion about two weeks after the first.

The first of these occasions, according to K, was when he first met the appellant. He was playing in the back yard of a house at Thorneside, apparently that of his grandmother, his mother's mother, when the appellant approached him. There was a bus in that yard. The appellant said that he wanted to show K something in the bus. There the appellant performed oral sex on him, had K perform oral sex on the appellant and attempted to sodomize him.

Counts 4 and 5, which I have said occurred about two weeks later, were at the same residence. K's mother had put him to bed. He got up and tried to turn the light on with the result that he was mildly shocked, apparently due to some defective wiring. The appellant came into the room and shut the door. The complainant in the other offences, S, was in the room as well but he was only one or two at the time.

The appellant put his penis in K's mouth and then tried to sodomize him. K said that he was only three or four at the time of these offences. It is true that these offences were not particularised in time except as to the fact that K, who was born on 4 October 1969, was, he thought, only three or four at the time. This seems to place the offences in 1974, the year in which K's mother said she first met and became friendly with the appellant.

This tends to be supported by the fact that counts 1, 2 and 3 occurred on the first occasion on which K met the appellant which is likely to have been in 1974. It was not suggested at

the trial that the appellant was in any way prejudiced by the absence of further particulars as to the time at which any of counts 1 to 5 occurred. I therefore do not think that there is any substance in the point which the appellant now seeks to take that, in effect, he was wrongly convicted on counts 1 to 5 because he was in gaol during the relevant period.

The second chronological period was between 4 July l977 and 25 March 1978 during which counts 6 to 14 occurred. Other than in respect of counts 9 and 10 the complainant was S. The complainant in counts 9 and 10 was K. S was between four and five during this period and K was between seven and eight. The appellant was approximately 23 years of age at this time.

These offences included four of indecent dealing against S and three of sodomy. One of indecent dealing and one of attempted sodomy against K. According to S counts 6 and 7 occurred around October 1977 which was the day of the boys' common birthday. They were three years apart in age but shared a common birthday. This would have been K's eighth and S's fifth birthday.

S fixed the occasion as being some weeks after a visit to Lone Pine associated with their birthdays. Their mother had gone to pick up groceries. S and the appellant were in the house together. The appellant forced S to perform oral sex on him and then sodomized S. He told S not to tell anyone.

Count 8 occurred about three weeks later. While S's mother was having a shower the appellant entered S's room and forced S to perform oral sex on him. Counts 9 to 12 according to K occurred about five years after counts 1 to 5 and when he was about seven or eight. Taken together with the evidence of S and his mother in respect of counts 14 and 15, to which I will come, it may be inferred that they occurred in late 1977.

K was quite specific as to the circumstances. According to him the appellant knocked at the door which K answered. Upon seeing it was the appellant K ran into S's room taking S with him and hid under the bed. They had been there some time when the appellant came into the room. He asked what the boys were doing and then said to S, "You've done it before." K saw the appellant put his penis inside S's mouth. The appellant then put his penis in K's mouth. He then repositioned K and attempted to sodomize him. K then saw the appellant apparently sodomize S. The appellant ejaculated. He told the boys not to tell anyone and left the room.

About two weeks later the appellant again visited the home and the complainants' mother went out shopping leaving the appellant and S behind. According to S, the appellant forced him to perform oral sex on him and sodomized him. Later that day S made a complaint to his mother. His mother said that this complaint was made just before Christmas 1977.

The evidence of each of the complainants appears to be convincing. The evidence of each was supported by the other

and the evidence of S's complaint was supported by the evidence of his mother.

The appellant gave evidence denying commission of any of the offences and claiming that he first met the complainants' mother only in August 1976. She had earlier given evidence that she met the appellant in 1974. It is true that a substantial period of time elapsed between the commission of these offences and the appellant's trial. His Honour gave a common and adequate warning about the problems associated with this. However, there is no reason to think that it was not reasonably open to the jury to accept the evidence of the complainants, supported as it was to some extent by their mother and to reject that of the appellant.

The appellant forwarded a letter to the Registrar of this Court dated 1 February in which he set out the substance of his grounds and arguments. Apart from the point that he was in prison in 1974, with which I had dealt, his other points really relate to the failure he says of his barrister to adduce evidence which he put in the hands of his barrister. This seems to have included a work history of the appellant which the appellant says would have assisted in establishing his innocence.

The appellant at the trial was represented by experienced counsel. He has failed before us to particularise any further the matters which he says counsel failed to use and there is nothing in my opinion to indicate that counsel acted other

than competently in the exercise of his own discretion in refusing to take up the suggestion of the appellant to use this material in some way in evidence. It also included some photographs.

It is unnecessary, therefore, in my opinion to deal any further with the submissions of the appellant in that respect. In my opinion the appeals against conviction must fail.

THE CHIEF JUSTICE: I agree.

MACKENZIE J: I agree.

THE CHIEF JUSTICE: The appeals are dismissed.