SUPREME COURT OF QUEENSLAND

CITATION:	*R v Dickeson; ex parte A-G; R v Dickeson* [2004] QCA 78
PARTIES:	**R** **v** **DICKESON, Andrew Mark Hugh** (respondent/applicant) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 387 of 2003 CA No 398 of 2003 DC No 2982 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Appeal by A-G (Qld) Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	17 March 2004
DELIVERED AT:	Brisbane
HEARING DATE:	17 March 2004
JUDGES:	McMurdo P, Jerrard JA and Philippides J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Attorney-General's appeal against sentence dismissed** **2. Respondent/applicant's 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 – APPEAL BY ATTORNEY-GENERAL OR OTHER CROWN LAW OFFICER – APPLICATIONS TO INCREASE SENTENCE – OFFENCES AGAINST THE PERSON – where respondent/applicant pleaded guilty to two counts of maintaining a sexual relationship with child under 16 years with a circumstance of aggravation, one count of indecent treatment of a child under 12 years and one count of possessing child abuse computer games – where sentenced to 10 years imprisonment and reporting requirements ordered upon release from custody – where respondent/applicant was

29 years old at sentence – where offences involved three young girls – where relationship with two girls had been maintained for nine months – where explicit sexual activity with children captured on video and still photographs and stored on computer – where photographs of other children in public places and child pornography stored on computer – whether sentence was manifestly inadequate or manifestly excessive

Criminal Law Amendment Act 1945 (Qld), s 19A

R v Arnold; ex parte Attorney-General (Qld) (2002) 134 ACrimR 151, cited
R v D [2003] QCA 88; CA No 444 of 2002, 4 March 2003, cited
R v D [2003] QCA 148; CA No 207 of 2002 and CA No 232 of 2002, 4 April 2003, cited
R v D [2003] QCA 426; CA No 211 of 2003, 25 September 2003, cited
R v Dillon [2003] QCA 305; CA No 89 of 2003, 21 July 2003, cited
R v H [2004] QCA 37; CA No 349 of 2003, 19 February 2004, considered
R v H [2003] QCA 392; CA No 171 of 2003, 12 September 2003, cited
R v Herford [2001] QCA 177; CA No 334 of 2000, 11 May 2001, cited
R v Myers [2002] QCA 143; CA No 353 of 2001, 19 April 2002, cited
R v S [1993] CA No 316 of 1993, 7 October 1993, cited
R v Young; ex parte Attorney-General (Qld) (2002) 135 A CrimR 253, cited

COUNSEL: L J Clare for the appellant
M D Byrne QC for the respondent/applicant

SOLICITORS: Department of Public Prosecutions (Queensland) for the appellant
Ryan & Bosscher for the respondent/applicant

THE PRESIDENT: Dickeson pleaded guilty by way of ex officio indictment to two counts of maintaining a sexual relationship with a child under 16 years with a circumstance of aggravation, one count of indecent treatment of a child under 12 years and one count of possessing child abuse computer

games. The next day he was sentenced to 10 years imprisonment on the counts of maintaining a sexual relationship, five years imprisonment for indecent treatment of a child under 12 years and one year imprisonment for possessing child abuse computer games. Part 9A of the *Penalties and Sentences Act* 1992 (Qld) means that he will serve 80 per cent of the 10 year sentence before becoming eligible for release on parole. The judge also ordered under s 19A *Criminal Law Amendment Act* 1925 (Qld) that Dickeson report his address within 48 hours of release from custody and any subsequent change of address and that he report to the officer in charge at Police Headquarters at three monthly intervals for 20 years.

The Attorney-General appeals against the sentence imposed contending that it was manifestly inadequate and that this Court should substitute a sentence of imprisonment of 15 years. Dickeson applies for leave to appeal against sentence and contends that the sentence was manifestly excessive and that a sentence of eight and a half years imprisonment should be substituted.

Dickeson was 29 years old at sentence. He had partially completed TAFE studies in engineering and computing and after a chequered work history with lengthy periods of unemployment had been working for the Queensland Police Service installing computers for about a month before his arrest on these charges. He then immediately lost his job and again became unemployed. He had no relevant criminal history, but had one

entry for unlawful wounding when he was 15 years old which attracted a nominal penalty.

The Crown Prosecutor at sentence contended that Dickeson was a paedophile and that was not contested. A police search of Dickeson's home in time revealed hundreds of photographs of young children in public places wearing togs and skimpy clothing. He had a consuming interest in child pornography and had downloaded over 800 indecent images of children from the internet which he had stored on his various computers and compact discs.

The victims of the offences were three children from two family units headed by single mothers. Dickeson befriended the mothers, had a brief sexual relationship with them and then remained friendly with the children having obtained the mother's trust. He then obtained access to the children aged between six and eight years old and baby-sat them. The children were extremely fond of Dickeson, who spent many hours playing childhood games with them.

The most serious offences, those of maintaining a sexual relationship, were discovered in this way. J was aged eight and her sister S aged six. The children initially told their mother they had showered with Dickeson. S had washed his hair and Dickeson had washed her tummy. J said he had taken a photo of them in the shower. Their mother was understandably concerned and contacted police. The children were medically examined, but there were no significant findings. The

children participated in police interviews. The mother rang Dickeson and tape-recorded a conversation with him in which he admitted to showering with the girls and taking photographs of them in the shower.

Police then searched Dickeson's house and seized CDs, photos, four computer hard drives and a digital camera. He denied that there was any child pornography contained in the computer material and denied touching the girls. He then took part in a record of interview and made very limited admissions, as a result of which he was charged with indecent treatment concerning J and S. The two girls were then re-interviewed, but did not describe anything like the conduct subsequently revealed. They were reluctant complainants.

Some months later the police at the Computer Enhancement Section located the stored still and moving images of J, S and Dickeson engaged in sexual acts and the full extent of Dickeson's offending against the children became apparent. The computer images were well-hidden through the use of passwords and were sophisticatedly indexed. The material included pornographic material downloaded from the internet over a two to three year period.

The images also depicted Dickeson with a third complainant, the eight year old A, with her legs apart, sometimes naked. A said that Dickeson had not touched her, although on one occasion he asked her to touch his private parts but she refused. He cultivated her; she said he was a very funny man;

they played together; he would give her money and toys and took many photographs of her, many of which he gave her to keep.

Dickeson was not interviewed again after the computerised material was discovered. Once he and his legal advisers had an opportunity to view this material they notified the prosecution that Dickeson would plead guilty to an ex officio indictment without any need to re-interview his victims.

Dickeson's relationship with J and S was maintained over a period of about nine and a half months. The images revealed a full sexual relationship with J, including penile vaginal intercourse and fellatio. The offence of maintaining concerning S consisted of at least one act of simulated intercourse, fellatio and other indecent activity. The recorded visual images show both girls performing for the camera, happy, laughing and acting in a seductive manner, completely unnatural for their ages. At one point J asks Dickeson, "Is it over?" Many of the photographs suggest posed photography. The video includes a striptease and the two girls rubbing each other in oil and wrestling in their underpants.

The prosecutor's descriptions of the photographs of J and S are stomach churning and include J masturbating and licking Dickeson's penis; Dickeson's penis pushing into the outer labia of J's vagina as she sits astride him and then ejaculating onto her vulva; Dickeson's penis partially inside

S's outer labia with the tip of it pressing against her vagina; S masturbating his penis; the head of his penis in S's mouth and close-up images of both girls' vaginas.

It seems that the images must have been recorded during five or six episodes when Dickeson baby-sat the complainants, although some indecent contact seems to have preceded these episodes of baby-sitting and Dickeson was in any case a regular visitor to the families.

A paediatrician was shown copies of the images and formed the opinion that three photographs depicted the adult male penis inserted between the lips of the child's labia majora.

A victim impact statement prepared by the mother of J and S explains the dreadful effect Dickeson's offending has had on their family unit. They have moved house, she has separated from her partner, she has suffered mood swings and depression and unpredictable panic attacks and anger. S has displayed violent, aggressive, inappropriately sexual and cruel behaviour. Fortunately, J and S have benefited to some extent from counselling, but it seems they and their mother have a difficult path ahead. Their mother is frightened for their safety, she is over-protective and concerned for their future mental well-being. She understands the girls feel she failed them as a mother because of what happened to them and she feels intense guilt at this. S is physically and emotionally violent, whilst J is depressed. The mother describes her family as broken in more ways than one "all of us are hurting

and hating, not knowing how to rise above and come together to fight it."

The conduct involving A has also had a negative impact. That unlawful relationship did not develop because she refused to allow Dickeson to touch her, but it has nevertheless had devastating consequences. Fortunately, A seems to have benefited from, and responded to, counselling and although A's mother feels guilt over the episode, the statement from A's mother provides some optimism for hoping that the offending may not have a lasting impact upon A.

It seems, as is common in these cases, that the children and their mothers are suffering from feelings of guilt, none of which should be borne by them. The guilt should be borne solely by the offender Dickeson. He does not, however, seem to realise this. He consistently claimed to the police, and more recently, to a psychologist who has examined him on a number of occasions, Mr Frey, that these young children were in some way responsible for his unlawful sexual conduct.

No physical violence was done to the children and they were not physically injured. But Dickeson undoubtedly insinuated himself into their lives and, especially in the cases of J and S, groomed them and corrupted them for his own selfish, perverted sexual satisfaction. There is no doubt his conduct, at least as regards J and S, will have long-term deleterious consequences for them.

Defence counsel at sentence tendered a report from psychiatrist Dr Curtis and another from psychologist Mr Frey. Dr Curtis described Dickeson as a paedophile (DSM-IV-TR 302.2) with a Schizotypal Personality Disorder and Alcohol Dependence Syndrome. Dr Curtis noted that in an alcohol-free environment in prison with good rehabilitative programs there should be some constructive outcomes with improvement of internal control mechanisms, and community-based external controls recognising the lifelong struggles paedophiles have with their paraphilic problems. He noted that Dickeson was immature but nevertheless well understood the wrongfulness of his conduct. His chronic unemployment had contributed to his frustration with his life. Since he was charged with these offences he had formed a de facto relationship with a woman who was pregnant. Their baby was due on 9 December 2003. Dr Curtis described Dickeson as fantasy ridden and socially inept with his main socialisation involving young people and fantasy games, and in more recent times, young adults acting out fantasies through sexual promiscuity facilitated by alcoholic disinhibition. Dickeson has no current significant victim empathy and he did not believe his conduct would have had any bad effect on the children. Dr Curtis noticed that Dickeson was bisexual in orientation and does not exclusively relate sexually to children. He is in that group who select to molest the children of friends with an apparent preference for young girls. He had no history of sexual abuse as a child himself. He self-rationalised his deviant behaviour in reporting the alleged precocity of the children. His lack of victim empathy needs to be dealt with during an offender

training program. Dr Curtis concluded that Dickeson is a particularly immature paedophile with severe personality damage, poor social skills, low self-esteem and poor self-assertion with adults. He has a personality structure (schizotypal) which is recognised as close to the psychotic border with regard to cognitive style. The programs run by Correctional Services in Queensland have good outcomes and with the help of those programs addressing his comorbid conditions and the sobriety of prison life, there will be a probability of a more positive outcome from his participation in the Sexual Offender Program.

Psychologist, Mr Frey, noted that Dickeson has twice attempted suicide in the past when personal relationships ended. He has had lengthy periods of unemployment. It seems that his heavy drinking was a factor in the commission of these offences, relaxing whatever inhibitions he may have felt about his sexual involvement with the children. Significantly however, as the prosecutor pointed out at sentence, the mother of J and S forbade him to drink alcohol when babysitting her daughters. It seems he ignored those directions. Dickeson also told Mr Frey that the girl victims were sexually interested in him and acted seductively towards him. Mr Frey noted that therapy for offenders like Dickeson is possible, provided they can recognise the inappropriateness of child-adult sexual contact and the potentially serious consequences of that for the child, but until he understands the potential harm he may have caused and takes greater responsibility for his own conduct he is at risk of abusing children in the future. Dickeson must

develop sufficient victim empathy to be motivated not to re-offend. The current success rate of rehabilitative programs is promising. Because Dickeson was apprehended early in his career as a paedophile he stands a better chance, with further counselling, to avoid re-offending.

The learned sentencing judge, at the request of the prosecution, viewed an edited selection of the images found in Dickeson's possession (Ex 5). Her Honour noted that this was useful in enabling her to view, in a clear way, the premature sexualisation of the victims and to understand the victim impact statement. The learned primary judge referred to the competing aggravating and mitigating factors and noted that none of the numerous cases said to be comparable, to which she had been referred were completely on point. Her Honour determined that, in all the circumstances, a sentence of 11 or 12 years imprisonment was appropriate but that recognition must be given to the plea of guilty and reduced that sentence to 10 years imprisonment.

The maximum penalty for the most serious offences of maintaining a sexual relationship with a circumstance of aggravation is, here, life imprisonment. It should also be remembered that the 20 year reporting condition is part of the sentence and provides some significant community protection.

At 29 years old, despite his apparent immaturity, the applicant does not have the benefit of the mitigating factor of extreme youth. The offences were a breach of trust in that

Dickeson made himself a part of the lives of his victims through befriending their mothers and subsequently abused that trust in a most vile way. The offences involved three young victims, aged from six to eight years and the impact on them, especially J and S, and on their mothers has been extreme. The offences of maintaining a sexual relationship occurred over a nine and a half month period and it is fortuitous they came fully to light. The sophisticated computer storage and indexation of the photographic proof of the commission of Dickeson's offences was an aggravating factor in that it enabled him to get ongoing sexual gratification from his offending and the children were at risk of further violation through the publication of that pornography to others. Dickeson's cooperation was limited in that his admissions extended only to what he understood the police could prove against him. Any remorse on his part is also questionable because he has consistently tried to shift the blame from himself, where it belongs, to the little girls, his victims, both in his statements to police and in his statements to the psychiatrist and psychologist who subsequently examined him in preparation of his defence.

An important factor in mitigation is the applicant's plea of guilty by way of ex officio indictment, although admittedly to an overwhelming case. Nevertheless, this demonstrated significant cooperation with the administration of justice. He had no prior convictions for like offences. The children were not physically threatened nor did they suffer any direct physical violence. It seems he has some prospects of

rehabilitation, provided that he can get, and accepts, assistance for his multiple personality disorders and his paedophilia and finally recognises his full responsibility for the commission of these offences.

Counsel for the appellant, the Attorney-General, and counsel for Dickeson have each referred us to a large number of cases said to be comparable, which they contend support their respective cases. Unsurprisingly, these cases each turn on their individual facts and none is truly closely comparable to the peculiar factual scenario here. Some do, however, provide assistance in a general way. *R v Myers* [2002] QCA 143; CA No 353 of 2001, 19 April 2002; *R v Arnold; ex parte Attorney-General* (2002) 134 ACrimR 151; *R v Young; ex parte Attorney-General* (2002) 135 ACrimR 253 and *R v D* [2003] QCA 88, CA No 444 of 2002, 4 March 2003 clearly demonstrate that the sentence here was within the appropriate range.

The fact that lesser sentences have been imposed in other cases which can be arguably said in some ways to be even worse than this case, and which this Court found not to be manifestly excessive on an application for leave to appeal against sentence, does not make this sentence manifestly excessive. Compare, for example, *R v H* [2004] QCA 37, CA No 349 of 2003, 19 February 2004. Furthermore, *R v H* concerns just one complainant who was not as young as the complainants here; she was aged between 13 and 15 years at the time.

Whilst a slightly heavier or slightly more lenient penalty would also have been justified by the cases to which we have been referred, those cases do not demonstrate that the sentence here was manifestly excessive or manifestly inadequate. It was not. It follows that the Attorney-General's appeal against sentence should be dismissed and Dickeson's application for leave to appeal against sentence should be refused.

JERRARD JA: In this matter, the President has carefully described the relevant facts. Neither party to either appeal suggests that the learned sentencing Judge failed to consider any relevant matter or gave weight to any irrelevant one. The learned sentencing Judge carefully analysed a number of other sentences either imposed or upheld by this Court on appeal. Those included the sentences to which the President has referred and in addition the sentences in the matters R v. S 316 of 1993, R v D [2003] QCA 148, R v. Ronald Dillon [2003] QCA 305, R v. Herford [2001] QCA 177, R v. D [2003] QCA 426, and R v. H [2003] QCA 392.

Those were nearly all very recent decisions of this Court, and the cases analysed by the learned sentencing Judge involved examples of offenders who had maintained a sexual relationship with one child, offenders who had maintained those relationships with more than one child, and offenders who had simply forcibly raped a small child.

All in all, I am satisfied that the sentences imposed in those cases and the analysis made of them by the learned sentencing Judge demonstrates that the sentence imposed in this matter was an appropriate one.

PHILIPPIDES J: The learned sentencing Judge in carefully considered reasons had reference to relevant authority and applied appropriate sentencing principles. There were a number of significant aggravating features in this case, not the least of which were the devastating consequences of Dickeson's offending conduct for the victims and their families and the abuse of trust involved.

Whilst credit was given by the learned sentencing Judge for matters of mitigation, including the plea of guilty, that plea must be seen, as indeed her Honour correctly saw it, in the context of the strong Crown case, Dickeson's lack of insight in respect of his conduct and his lack of empathy for his victims. Although none of the comparative sentences to which we have been referred were truly on point, they do indicate that the sentence imposed by the learned sentencing Judge was neither manifestly excessive nor manifestly inadequate. I would also dismiss the appeal and the application for leave to appeal.

THE PRESIDENT: The order is the appeal is dismissed. The application for leave to appeal is refused.