

# SUPREME COURT OF QUEENSLAND

CITATION: *R v SAG* [2004] QCA 286

PARTIES: **R**  
**v**  
**SAG**  
(applicant/appellant)

FILE NO/S: CA No 55 of 2004  
DC No 1238 of 2003

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 6 August 2004

DELIVERED AT: Brisbane

HEARING DATE: 2 June 2004

JUDGES: Jerrard JA, Atkinson and Philippides JJ  
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. Allow the application for leave to appeal;**  
**2. Allow the appeal;**  
**3. Vary the order below by ordering that all sentences imposed on 11 February 2004 be served concurrently with each other and with the sentence of imprisonment the applicant was then serving**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPLICATIONS TO REDUCE SENTENCE – WHEN GRANTED – OFFENCES AGAINST THE PERSON - SEXUAL OFFENCES – where applicant convicted after a trial of a substantial number of sexual offences against three of his step daughters – where applicant given a head sentence of 14 years imprisonment – where that sentence was ordered to be served cumulatively on a sentence of 4 years imposed with respect to sexual offences committed against a fourth step daughter to which the applicant had pleaded guilty – where no relevant mitigating factors – whether sentence manifestly excessive

*R v AP* [2003] QCA 445; CA No 133 of 2003, CA No 435 of 2002, 17 October 2003, considered

*R v C; ex parte A-G (Qld)* [2003] QCA 134; CA No 400 of 2002, 24 March 2003, cited  
*R v D* [2002] QCA 410; CA No 230 of 2002, 3 October 2002, considered  
*R v D* [2003] QCA 426; CA No 211 of 2003, 25 September 2003, cited  
*R v D* [2003] QCA 305; CA No 89 of 2003, 21 July 2003, considered  
*R v G* [1997] QCA 479; CA No 380 of 1997, 21 November 1997, considered  
*R v G* [2002] QCA 381; CA No 123 of 2002, 25 September 2002, considered  
*R v H* [2001] QCA 167; CA No 40 of 2001, 1 May 2001, considered  
*R v H* [2003] QCA 392; CA No 171 of 2003, 12 September 2003, cited  
*R v Herford* [2001] QCA 177; CA No 335 of 2000, 11 May 2001, considered  
*R v K* (1993) 69 A Crim R 236, considered  
*R v L* [1999] QCA 423; CA No 242 of 1999, 7 October 1999, cited  
*R v L* [2002] QCA 377; CA No 144 of 2002, 23 September 2002, considered  
*R v Levack; ex parte A-G (Qld)* [1999] QCA 448; CA No 263 of 1998, 27 October 1999, considered  
*R v LJ* [2004] QCA 114; CA No 407 of 2003, 14 April 2004, considered  
*R v M* [1996] QCA 257; CA No 137 of 1996, 2 August 1996, considered  
*R v Myers* [2002] QCA 143; CA No 353 of 2001, 19 April 2002, cited  
*R v R* [1998] QCA 360; CA No 231 of 1998, CA No 232 of 1998, 25 August 1998, considered  
*R v R* [2000] QCA 279; CA No 126 of 2000, 14 July 2000, cited  
*R v S* [1993] QCA 367; CA No 316 of 1993, 7 October 1993, cited  
*R v Simpson* [1999] QCA 156; CA No 461 of 1998, 7 May 1999, considered  
*R v Young; ex parte Attorney-General (Qld)* (2002) 135 A Crim R 253, cited

COUNSEL: K M McGinness for the applicant/appellant  
 M J Copley for the respondent

SOLICITORS: Legal Aid Queensland for the applicant/appellant  
 Director of Public Prosecutions (Queensland) for the respondent

[1] **JERRARD JA:** On 9 February 2004 SAG was convicted after a trial of the commission of a substantial number of sexual offences against three of his

stepdaughters, G, P and N. On 11 February 2004 he was sentenced to various concurrent terms of imprisonment of which the longest was a sentence of 14 years, those concurrent sentences to be served cumulatively with a sentence of four years imprisonment he was then serving, imposed on 16 November 2001 in respect of sexual offences to which he had pleaded guilty, committed by him on a fourth stepdaughter R. He has applied for leave to appeal against the severity of the sentences imposed in February of this year.

- [2] SAG became involved in the lives of his four stepdaughters when their mother first met him, at a time when she was living with her daughters in a women's refuge. After that she and her children lived in a halfway house, where SAG began living with them, and in or about late 1992 they then moved to a farm property in rural provincial Queensland.

### **Abuse of G**

- [3] The evidence of the eldest stepdaughter G was that sexual abuse of her began when she was in year eight in 1993, soon after that move to the farm. She described how SAG would "teach us lessons, like what would boys do to us, what to expect that boys would do to us."<sup>1</sup> Her evidence was that he would join her when she had a shower, washing her back and front chest area and occasionally touching her in the vaginal area. She was expected to wash him, including his penis. She recalled his deliberately fondling her upper leg on one occasion when she was going to a school disco, allegedly to demonstrate what boys would do; these activities by SAG led to her hating being at home and spending as much time as possible after grade 10 at an aunt's place, by which stage she had effectively left home.
- [4] On an occasion of her mother's birthday when G was in grade 12, and visited her mother and sisters, SAG deliberately fondled her between the thighs, once again remarking that he was "just trying to see how far you'd let a guy go."<sup>2</sup> This followed conduct earlier on that same visit when, after persuading her he was simply going to rub Vicks on her back, she undressed her upper body and he rubbed both her back and chest.
- [5] In respect of G, SAG was convicted of one offence of maintaining a sexual relationship with a child under the age of 16 who was in his care, that offence occurring between 1 January 1993 and 19 June 1995, and three offences of unlawfully and indecently dealing with G. He was also convicted of three offences of unlawful and indecent assault of her. She was 18 when those last two offences of assault were committed on her mother's birthday, aged 13 to 16 during the period in which that sexual relationship was maintained, and both a child under 16 and in his care when the offences of unlawful and indecent dealing occurred. The maximum penalty for which he was liable for the offences committed on G was 14 years in respect of the maintaining charge, and SAG was sentenced to a head sentence of eight years for that offence and to four years imprisonment for all other offences involving G.

### **Abuse of P and R**

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<sup>1</sup> At AR 31

<sup>2</sup> At AR 41

- [6] SAG was also convicted of seven offences involving his stepdaughter P, who was third eldest of the four stepdaughters, and still only 19 at the trial. Regarding her, he was convicted of having maintained a sexual relationship with her between 1 January 1995 and 25 October 2000, and while she was both under 12 and 16 years of age, and in his care. He was also convicted of two offences of indecently dealing with P while she was under 12 years of age and in his care; and four offences of having indecently dealt with her while she was under 16 years of age and in his care. The maximum penalty for the charge of maintaining regarding P was 14 years and the learned judge sentenced SAG to 12 years imprisonment for that offence, which involved his maintaining a sexual relationship with P for five years and nine months, while she was aged between 10 and 16. He was sentenced to terms of six years imprisonment in respect of the counts of indecent treatment while she was under 12, and to four years on the other counts involving her.
- [7] In her evidence she described there sometimes being two girls with SAG in the shower, sometimes one, and his starting to wash her on the breasts in 1995. In that same year he induced her, when the children were playing a game of hide and seek, to hold his penis and to stroke it, and on occasions after that he would “make us hold his penis”<sup>3</sup> while he was giving the girls driving lessons. Her evidence included that in answer to questions she asked him during those lessons, he admitted doing the same indecent acts with her sister G and her sister N, but said he had not with her sister R, who was too young. In fact R’s evidence at the trial involving charges against G, P, and N was that she had been indecently dealt with from the age of five; but SAG did not plead guilty to offending behaviour against R when she was that young.
- [8] P described the sexual abuse by SAG progressing to his fondling her breasts and “fingering me”<sup>4</sup> too, which she said hurt. She also recalled SAG sucking her breasts. She described regular sexual abuse consisting of both digital penetration and fondling her breasts, which she said occurred two or three times a month, sometimes more and sometimes less.
- [9] She recalled being threatened with eviction from the home by SAG, and his having spoken of how he could kill people. She also recalled being told that SAG could not rape her because he could not perform sexual intercourse. This was a curious reflection of a matter the learned trial judge spoke of when sentencing SAG which was that:
- “You persuaded your wife of the fact that you were impotent. This enabled you to have a pretext for sleeping in a different room to your wife. Of course, there was no truth in that because you were molesting the children and availing of that level of isolation to do so. So it was a calculated and long lasting manipulation of this family in order to satisfy your own sexual gratification.”<sup>5</sup>

SAG had admitted when being cross-examined at the trial that he had lied to his wife about being impotent, and had done so to cover up what he was doing with her children, which had included – on his own admission in cross-examination – his attempting sexual intercourse on a number of occasions with R when she was 10. His evidence was that his dealings with R had given him sexual satisfaction,

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<sup>3</sup> At AR 78

<sup>4</sup> At AR 80

<sup>5</sup> At AR 398

and had progressed from her touching his penis to her masturbating him to his digitally penetrating her vagina and then to his attempting to have intercourse with her in what he described as “play fucks”; he said that all this occurred because she had been sexually curious and he had been the one trying to hold the 10 year old back.

### **Abuse of N**

- [10] Regarding N, the second eldest stepdaughter, SAG was convicted of one count of having maintained a sexual relationship with her for seven and a half years, from 1 August 1991 until 31 December 1998, covering a period when she was both under 12 and under 16 years of age, and when she too was in his care. It began when she was eight years old. The first incident she described was being touched on her vulva when swimming in a dam. This progressed to his putting her hand on his penis on another occasion, still when she was aged eight, and her then being taught to masturbate him. After that on her evidence “I used to wank him pretty regularly”<sup>6</sup>, at least once a week. She described how this had developed into a game in which he would see how fast she could get him to ejaculate, timing her against a microwave clock, which she – at age nine – thought was a great game. Other varieties of abuse involved her masturbating SAG while she was in the bottom bed of a bunk bed, while SAG, who was standing, was playing (apparently innocently) with P in the upper bunk bed. She also described sharing a shower with SAG, masturbating him in that, and his washing her, including her genitals.
- [11] By grade seven, when aged between 12 and 13, she had wanted to stop this behaviour, but SAG “used to say that it was safer to do these things with him than some boys” and that “it was better that we extend our curiosity on him than on somebody else”<sup>7</sup>; and she discovered that rejecting his advances would lead to tension in the home. This included that SAG “sort of basically threatened mum to leave”, and SAG on one occasion threatened to evict N from the home. She said SAG told her that he did not really like G masturbating him because she was too hesitant, and P was not firm enough on her grip.
- [12] This resulted in N being “sort of conceded into letting him touch me and giving him a wank, but I won’t actively participate. I’d let him undress me and lie on the bed and sort of let him touch me”, and she described SAG complaining about that and calling her a “sack of potatoes.”<sup>8</sup> Over time this led to digital penetration, which SAG said would help N “make it easier when I eventually did have sex”; and this conduct occurred approximately once a week, except when she was menstruating.
- [13] She recalled having on one occasion seen SAG being masturbated by R and being shocked; one of her reasons for remaining at the farm and attempting to educate herself by distance education rather than attending a University was because she thought that if she stayed, SAG would leave R alone. Her evidence was that after her 18<sup>th</sup> birthday she “just laid there and let him” have sexual intercourse. She described having been pressured by him for intercourse for some time and having been told by him that he had killed some eight people over time. She let sexual intercourse with her occur because she thought this would result in R being left alone. There were four such occasions of sexual intercourse; SAG was convicted of

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<sup>6</sup> At AR 118

<sup>7</sup> At AR 129

<sup>8</sup> This evidence is at AR 130

rape in respect of all four. Those convictions are not challenged on this application, and his counsel submitted that the jury must have found N submitted unwillingly, to the applicant's knowledge.

- [14] Altogether SAG was convicted of those four counts of rape of N, eight counts of indecent dealing with her when she was under 12 and in his care, two counts of indecent dealing with her when she was aged under 16 and in his care, and the count of maintaining a sexual relationship for that prolonged time of seven and a half years. He was sentenced to 14 years imprisonment of each of the counts of rape and on that count of maintaining, (which was the maximum available penalty for that last count), to six years imprisonment for the offences of indecently dealing with N when she was under 12 years of age, and four years imprisonment on the other counts of offending against N.

### **What the applicant said about R and N**

- [15] I have described his version of his offences committed on R. Regarding N, his evidence was that there had been contact of a sexual nature between them, but he was not sure if she was 16 or "just almost 16" when that happened. He described it being "mainly masturbation, that sort of thing"<sup>9</sup> with sometimes "oral contact", and he considered he and N "just had a very good, happy relationship."<sup>10</sup> He made a formal admission in the jury's presence of being convicted in November 2001 on his own plea to two counts of having unlawfully permitted himself to be indecently dealt with by R when she was aged under 12 and in his care, one count of indecently dealing with her when she was under 12 and in his care, and one count of having maintained a sexual relationship with her between 2 March 2000 and 28 March 2001, in which he had attempted to have unlawful carnal knowledge of her while she was still under 12 years of age and in his care. It was those admitted matters which he was explaining in his cross-examination.

### **The sentence on R**

- [16] For those offences on R he received a four year sentence for the offence of maintaining a sexual relationship, and a 12 month concurrent sentence for the other offences. The learned sentencing judge made it clear that the sentence would have been six and seven years imprisonment for the offence of maintaining a sexual relationship, had SAG not had available the mitigating factors of his having pleaded guilty to an ex-officio indictment, and having co-operated fully with the police. He was considered to have volunteered matters to the police in a full and frank record of interview, and to have demonstrated remorse. The sentencing judge described SAG as having had suicidal tendencies, and took into account that he had assigned his interest in that farm property to the children's mother, a matter the judge regarded as a further aspect of remorse by SAG. That last matter in mitigation applied to all the stepdaughters, but not the other mitigating factors.
- [17] In this application the particular matters urged on his behalf are that there was no digital or penile penetrative offending involving G, and no penile penetration of P. Further, the penile penetration of N occurred when she was an 18 year old adult, and that as with P, there had only been digital penetration of her while she was a child. He had already been dealt with for his admitted attempts at penile penetration of R.

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<sup>9</sup> At AR 226

<sup>10</sup> At AR 227

This court was also reminded that the offences of rape of N had occurred over a relatively short period.

- [18] Those are all validly raised matters. The court was taken to a considerable number of decisions of this court in other cases of sexual offences, principally involving charges of maintaining a sexual relationship, in which very substantial sentences were upheld or imposed. Those matters involving an offender convicted in respect of one child victim only, and on whom lengthy sentences were upheld or imposed on appeal, included the matters of *R v S* [1993] QCA 367 (15 years); *R v L* [1999] QCA 423 (11 years); *R v R* [2000] QCA 279 (11 years); *R v Myers* [2002] QCA 143 (11 years); *R v Young; ex parte A-G (Qld)* (2002) 135 A Crim R 253 (10 years); *R v C; ex parte A-G (Qld)* [2003] QCA 134 (10 years); *R v H* [2003] QCA 392 (8 years); *R v D* [2003] QCA 426 (10 years); *R v AP* [2003] QCA 445 (14 years); and *R v LJ* [2004] QCA 114 (14 years). In that last matter of *R v LJ* the most serious convictions were on seven counts of incest (there was no charge of maintaining a sexual relationship, since that offender's behaviour pre-dated Act No 17 of 1989 making that conduct an offence); the court in *R v LJ* considered the sentence which had been given in *R v A* to be relevant as a guide for the appropriate sentence for the offences of incest. The outcome of *R v A* and *R v LJ* shows that similar sentences can be expected for protracted, extremely abusive and incestuous relationships (it lasted 11 years in *R v LJ*) in which incest is the offence charged, as can be expected in cases of prolonged and abusive relationships in which children are in other varieties of care, and in which maintaining a sexual relationship is the most serious offence charged. In *R v A* it was a foster care relationship, in which the offender was convicted of maintaining a sexual relationship with the child for nine years, from when she was seven to when she was 16. Sexual abuse had actually begun when she was three and a half, in 1985, predating the offence of maintaining by four years.
- [19] Both the experienced counsel who appeared on the appeal agreed that the cases to which the court was referred, including ones in which there were multiple child victims, showed that significant matters substantially increasing a sentence for an offence of maintaining a sexual relationship included:
- a young age of the child when the relationship thereafter maintained first began;
  - a lengthy period for which that relationship continued;
  - if penile rape occurred during the course of that relationship;
  - if there was unlawful carnal knowledge of the victim;
  - if so, whether that was over a prolonged period;
  - if the victim bore a child to the offender;
  - if there had been a parental or protective relationship;
  - if the offender was being dealt with for offences against more than one child victim;
  - if there had been actual physical violence used by the offender; and if not whether there was evidence of emotional blackmail or other manipulation of the victims.

- [20] Matters which mitigate the penalty include conduct showing remorse, such as the offender voluntarily approaching the authorities, or seeking help for all the family; co-operation with investigating bodies, admissions of offending, co-operating with the administration of justice, and sparing the victims from any contested hearing.
- [21] A number of those aggravating matters are present in the offences committed by SAG with his three eldest stepdaughters, although one aggravating feature not present is penile intercourse with either G, P, or N, during the course of the maintained unlawful relationships. The benefit SAG can get from that is considerably dissipated by the offences of penile rape of N when she was still a teenager.
- [22] An examination of other appellate decisions involving multiple child victims with whom an offender has maintained a sexual relationship shows that the sentences imposed on SAG were severe by comparison. However, the facts vary considerably in those other matters, and they each show in differing ways the importance of the aggravating and mitigating matters mentioned.
- [23] In a matter of *R v K* (1993) 69 A Crim R 236 there were three child victims of K's offending. He pleaded guilty to counts of maintaining a sexual relationship with each of two stepdaughters and with one natural son. Each maintaining count covered a period of about three years. His conduct involved frequent vaginal intercourse with the stepdaughters, procuring his son to suck K's penis and procuring his stepdaughters to suck his son's penis. He had taken himself, his wife, and the three children to counselling. On an Attorney-General's appeal his sentence was increased to 12 years imprisonment.
- [24] In a matter of *R v M* [1996] QCA 257, that offender pleaded guilty to 33 charges involving two sons and a daughter. These included three offences of maintaining a sexual relationship, two of incest, 20 of indecently dealing with a child, and one of attempted incest. The offence of maintaining a sexual relationship with his daughter covered a 15 month period. That offender confessed his guilt to the police and showed remorse. He had a good work record and the appeal judgment records that his family forgave him for what he had done. His sentence was increased on an Attorney-General's appeal to a 10 year sentence.
- [25] In *R v G* [1997] QCA 479, that offender pleaded guilty to offences of maintaining a sexual relationship with two of his foster children and to individual sexual offences committed on a third. One offence of maintaining lasted four years, beginning when that child was aged 11; the other lasted three years, also beginning when the child was 11. G had been violent to all three complainant children, was 53 when sentenced, and had not committed any offences of penetrative intercourse. He had committed 17 offences of indecently dealing and two of assault occasioning bodily harm. His sentence of 14 years imprisonment was reduced to 12 years on his appeal.
- [26] In *R v Levack; ex parte A-G (Qld)* [1999] QCA 448, that offender pleaded guilty to offences involving five boys aged between eight and 14 years, but to only one offence of maintaining a sexual relationship. That was over a one year period with one victim; there were 21 charges altogether of indecent treatment and 13 of taking a child for an immoral purpose. There were no offences involving penetration. He was described as a predatory paedophile who had been sexually abused himself

when a child, and who had been receiving psychiatric treatment. His sentence of eight years was not increased on an Attorney's appeal.

- [27] In *R v R* [1998] QCA 360, that offender pleaded guilty to sexual offences against stepdaughters in two different de facto relationships. Regarding the two child victims in the first de facto relationship, he was sentenced on his own plea on a count of maintaining a sexual relationship with one of those children, and three counts of unlawful carnal knowledge of that same child, and for six offences of indecently dealing with the other child. Those latter offences had begun when that child was 11; the sexual relationship he maintained with the first child began when she was 10 and lasted for five years. He was described as having debauched the two children over a long period, and would abuse one in the company of the other. A sentence of 10 years imprisonment for the offence of maintaining a sexual relationship was upheld on his appeal. Regarding the victims of the second de facto relationship, one was a female child with whom he was convicted of having maintained a sexual relationship for two and a quarter years, beginning when the child was aged five; and he pleaded guilty to maintaining a sexual relationship for the same length of time with a boy, beginning when that child was seven. The appeal judgment does not record any penetrative offending behaviour with either child, and he was sentenced to nine years imprisonment, to be served concurrently, for those maintaining offences.
- [28] In a matter of *R v Simpson* [1999] QCA 156, there were five child victims. That offender pleaded guilty to offences of maintaining a sexual relationship with two of them, and of the commission of specific sexual offences with both those two children and the other three. One offence of maintaining a sexual relationship had lasted for a little over three years, beginning when the offender was 13, and the offending behaviour with that child involved sodomy, mutual masturbation, and the commission of oral sex. The second child with whom a sexual relationship was maintained had been the victim of numerous offences of sodomy and other sexual offences, and of the other three children one was subjected to the penetrative offence of sodomy and other sexual offences, and the last two children suffered non-penetrative sexual offences. That applicant had been a Government employee and an Adolescent Resource Worker, suffered from major depression and was remorseful. His sentence of 14 years for the offence of maintaining a sexual relationship was reduced to 12 years imprisonment on appeal.
- [29] In a matter of *R v H* [2001] QCA 167 that applicant had pleaded guilty to offences against three children over a 16 year period. He was convicted of maintaining a sexual relationship with one daughter and rape of her. His offending conduct with her began when she was aged five years old. It progressed from his touching her, to digital penetration, to oral sex, and to sexual intercourse, which started when she was nine years old. He maintained a sexual relationship with that daughter for 10 years, until she was 15. He also pleaded to sodomy of his stepson, and to rape of a neighbour's child. The appeal judgment records there having been a very high level of violence in the family unit in which the child victims suffered; and that offender's conduct included his having seriously assaulted his daughter on an occasion when he subsequently had intercourse with her, the assault breaking her wrist and fracturing one rib. A sentence of 17 years imprisonment was upheld on appeal.

- [30] In *R v Herford* [2001] QCA 177 there were three complainant victims, and a late plea of guilty. There had been no violence in the conduct of that offender and no active soliciting of his victims. He pleaded guilty to one count of maintaining a sexual relationship with a complainant child, and to specific acts with the other complainants and with the first complainant. He was an ambulance officer who had counselled boys who were troubled. On appeal this court held that the starting point for his offending behaviour was 11 years, and was appropriately reduced by his plea of guilty to nine and a half years. Particular regard was had to the sentences imposed in *R v G* [1997] QCA 479 and *Simpson*. Mr Herford's offences with the child with whom he maintained the sexual relationship included sodomy; but all of his offending behaviour occurred in a one and a half year period, and the child with whom he maintained the sexual relationship and committed sodomy was aged between 14 and 15 when the offences happened. The other two victims were aged 14 and 13 when offended against.
- [31] In a matter *R v G* [2002] QCA 381, there were nine child victims. A trial was held with respect to four of those complainants, one of whom was the offender's daughter; he pleaded guilty to offences involving five other children. Of the four complainants whose charges went to trial, two were aged 11, one 12 and one 13 at the time the offending began. He was convicted of a total of 12 offences of indecent dealing with those four children. Regarding the children against whom he admitted offending, two were sisters and he admitted committing a total of 45 offences involving them, which included one of having maintained a sexual relationship with that child for three and a half years, in a relationship which involved penetrative sexual intercourse. He pleaded guilty to seven charges of unlawful carnal knowledge of her and to 29 offences of indecently dealing with her. The other three victims against whom he admitted committing offences were three boys aged between eight and 15 years when offended against, and a total of 21 offences were admitted against those children, that conduct occurring over five and a half years; and some of those offences occurred while he was on bail for offences committed earlier. His sentence of 16 years imprisonment was upheld on appeal.
- [32] A 16 year sentence was also upheld in *R v L* [2002] QCA 377. That offender pleaded guilty to committing offences against three children, one being his natural daughter, one a stepdaughter, and one a child who was a friend of his stepdaughter's. His offences against his stepdaughter included one of maintaining a sexual relationship with her, which he in fact maintained from when she was seven until she was 14. He pleaded guilty to three charges of unlawful carnal knowledge of her, two of exposing her to indecency, one of procuring her to commit an indecent act, and four of aggravated indecent dealing offences. Regarding his natural daughter, he was convicted of an offence of maintaining a sexual relationship with her for a one year period, which began when she was seven; and of offences of indecent dealing with her, exposing her to indecent acts, and procuring her to commit indecent acts. Regarding the child who was a family friend, he was convicted of two offences of permitting himself to be dealt with indecently by that child. The description of his offences by this court included that he had groomed both his daughter and stepdaughter over time, with his conduct progressing to his regularly having sexual intercourse with his stepdaughter from when she was 12 years old. That had continued for some six years, in different places in Australia; a feature of their relationship became that he would pay the stepdaughter for sexual intercourse. That offender had been severely abused when he was a child, and had worked as a child prostitute in Sydney. A sentence of 16 years imprisonment for

maintaining the sexual relationship with his stepdaughter was upheld on appeal, as was the sentence of 14 years imprisonment for maintaining the relationship with his daughter.

- [33] In *R v D* [2002] QCA 410, that offender had committed offences against four children. He pleaded guilty to all offences. One victim was a stepdaughter, with whom he maintained a sexual relationship which began when she was 12 years old. Another victim was his daughter, and he admitted to offences of incest with her, committed when she was 14. A third victim was a different daughter, with whom he admitted maintaining a sexual relationship that began when that child was aged 13 or 14, and he admitted three offences of incest with her. The last victim was a friend of one daughter, whom Mr D admitted raping. He was sentenced to 11 years imprisonment for those offences, and that sentence was upheld on appeal. The older age of the victims when the sexual relationships commenced undoubtedly assisted him.
- [34] In a matter of *R v D* [2003] QCA 305, that offender pleaded guilty to maintaining a sexual relationship with four children. The victims were all young, one being a girl aged five when the relationship began, one a boy aged four, and the other two were each boys aged seven. The longest relationship lasted 18 months; three lasted only one year. He also pleaded guilty to one count of having indecently dealt with a fifth child. There was no penetrative intercourse, and the offences involved fondling, masturbation, and requests by him for oral sex to be performed, which were refused by all children. This court reduced his sentence on appeal from eight years to six.
- [35] I consider those relatively recently imposed sentences for offenders with multiple victims supports the agreement by counsel as to the matters which aggravate and mitigate a sentence for maintaining a sexual relationship with a child. There is a considerable disparity in the described sentences, but all can be reconciled by the presence or absence of those matters. Here the aggravating matters include that N was only eight when the sexual relationship began, and P was 10. The charged relationship with N lasted seven and a half years, and five with P. Each experienced digital penetration during it, and all three stepdaughters in respect of whom he was sentenced in February 2004 had been in his care. He had groomed and experimented with all three, focusing increasingly on N. He emotionally manipulated her, and he exposed both P and N to knowledge that he did the same with their sisters; that was another form of manipulation. The remorse he had demonstrated about R was absent about those complainants.
- [36] Since there are no relevant mitigating matters, the sentence of 14 years imprisonment, while at the high end of the scale, is not shown to be manifestly excessive when regard is had to the other sentences described and the aggravating matters which can be deduced from those, and to the fact that the sustained abuse over eight years of the three eldest stepdaughters culminated with offences of rape of N. However, the absence of offences of penile intercourse committed on G or P, or N when she was a child, do make a head sentence of 14 years manifestly excessive if cumulative to the sentence being served in respect of R. He was not being re-sentenced for those offences. Therefore, I would allow the application for leave to appeal, allow the appeal and vary the order below by ordering that all sentences imposed on 11 February 2004 be served concurrently with each other and with the sentence of imprisonment the applicant was then serving.

- [37] **ATKINSON J:** I agree with the reasons given by Jerrard JA and the orders proposed.
- [38] **PHILIPIDES J:** I agree with the reasons for judgment of Jerrard JA and the orders proposed.