SUPREME COURT OF QUEENSLAND

CITATION:	*R v Campbell* [2004] QCA 342
PARTIES:	**R** **v** **CAMPBELL, Cameron John** (applicant)
FILE NO/S:	CA No 287 of 2004 DC No 1087 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	20 September 2004
DELIVERED AT:	Brisbane
HEARING DATE:	20 September 2004
JUDGES:	Williams JA and White and Cullinane JJ Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for leave to appeal against sentence refused**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – NATURE OF THE OFFENCE – where applicant convicted of using the internet to procure a child to engage in a sexual act – where sentenced to 18 months imprisonment suspended after three months with an operational period of four years – where applicant thought he was communicating with a 13 year old girl – where sexually explicit language used – where applicant sent sexually explicit photographs of himself – whether sentence imposed was manifestly excessive *Criminal Code* 1899 (Qld), s 218A *R v Kennings* [2004] QCA 162; CA No 35 of 2004, 14 May 2004, followed
COUNSEL:	R King for the applicant M J Copley for the respondent
SOLICITORS:	Cranston McEachern for the applicant

Director of Public Prosecutions (Queensland) for the respondent

WILLIAMS JA: The applicant pleaded guilty on 23 August 2004 to an offence that between 24 August 2003 and 14 November 2003 he used the internet to procure a child to engage in a sexual act. That is the offence created by s 218A(1)(a) of the Criminal Code which came into effect on 1 May 2003.

The learned District Court Judge sentenced the applicant to 18 months imprisonment suspended after three months with an operational period of four years. This is an application for leave to appeal against that sentence on the ground that it was manifestly excessive.

The circumstances of the case are essentially revealed in the transcripts of five conversations which occurred during the relevant period between the applicant and a police officer who posed as a 13 year old girl. That, of course, is a situation which is envisaged by the section of the code.

In the circumstances it is necessary to refer only briefly to extracts from those transcripts. To my mind it is clear that the applicant was desirous of arranging a meeting with the young girl. To quote from the second conversation, which occurred on 29 August, the applicant said that he would love to have sex with the girl right now. When she asked, "How", he responded, "Come to your place and then have sex." When she said that her parents were at home he then asked her whether she ever went into the city and inquired whether she

would go to the city and meet him there. I am satisfied that the applicant was desirous of arranging a meeting with the girl.

Further, and this is of real concern, the language used by the applicant was very sexually explicit. I will only quote two brief passages from the transcript. On one occasion he said, "You open your legs wide apart and I lick and suck on your pussy till you get all wet and then I slide my cock inside of you." And on a later occasion: "I would finger you and lick you out. You could suck my cock." Again I emphasise that that is language used by the applicant to a person he believed to be a 13 year old girl.

Finally it should be recorded that in the course of the communications he sent over the internet two photographs of himself handling his erect penis.

Against that, counsel for the applicant referred to the fact that on a number of occasions throughout the conversations the applicant acknowledged that the girl was not aged 16 and that in consequence they ought not engage in actual sexual intercourse.

To my mind the elements of the offence are made out on a number of occasions throughout the communications. On a number of occasions the applicant exhorted the girl to "finger" herself and that alone, given the provisions of s 218A, would be sufficient to constitute the offence.

In the course of his sentencing remarks the learned Judge said, referring to the decision of the Court of Appeal in *R v Kennings* [2004] QCA 162:

> "The decision of the Court of Appeal in the matter of Kennings to which I have been referred provides considerable guidance to me in determining a sentence for you. I accept that you did not engage in the same measure of what the Court of Appeal there called insistent and aggressive pursuing of a child for the purpose of arranging a meeting, but there are other features not the least of which is your sending of the photographs to someone you believed to be 13 which balance against that. In my view all things considered the sentence imposed in Kenning [sic] provides the appropriate tariff in your case."

The applicant in the present case was aged 22 when he offended and that was his age when sentenced. He had no previous convictions. That meant that his personal circumstances were much the same as those of Kennings. In my view, whilst it may be that the applicant here was not as insistent or aggressive in seeking to arrange a meeting as was Kennings, that is more than amply balanced out by the more explicit sexual nature of the conversations and the sending of the photographs to which I have referred.

In my view it cannot be said that Kennings was, in all the circumstances, a more serious case. In my view Kennings does indicate the appropriate level of sentencing for offences of the type in question. It is not necessary for the Court to recount the background matters to the creation of the offence which are adequately outlined in the judgment of Justice Mullins in *Kennings*.

I am not persuaded that the sentence in fact imposed was manifestly excessive in all the circumstances, the application should be refused.

WHITE J: I agree.

CULLINANE J: I also agree.

WILLIAMS JA: The order is the application is dismissed.
