SUPREME COURT OF QUEENSLAND

CITATION:	*R v LP* [2005] QCA 266
PARTIES:	**R** **v** **LP** (applicant)
FILE NO/S:	CA No 108 of 2005 DC No 271 of 2005
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Beenleigh
DELIVERED EX TEMPORE ON:	1 August 2005
DELIVERED AT:	Brisbane
HEARING DATE:	1 August 2005
JUDGES:	McPherson, Williams and Jerrard JJA 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 dismissed**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN REFUSED – GENERALLY – incest committed against applicant's 10 and 12 year old daughters – whether sentence of six years' imprisonment manifestly excessive *R v B* [2000] QCA 42; CA No 345 of 1999, 24 February 2000, cited
COUNSEL:	The applicant appeared in person D L Meredith for the respondent
SOLICITORS:	The applicant appeared in person Director of Public Prosecutions (Qld) for the respondent

McPHERSON JA: The applicant was convicted on his pleas of guilty of three counts of incest, two counts of indecent treatment of a child under 12 years and two counts of indecent treatment of a child under sixteen years of age, who in each instance was his natural daughter.

In fact there were two complainants, both daughters of the applicant. One of them, A, was 10 years old when the offending began and the other, K, was 12 years old. All offences were committed against A except for one count of indecent treatment against K. He was sentenced to six years for the offences of incest and five years for the others, to be served concurrently.

The applicant, who was 32 to 34 years of age when he offended, lived with his wife and children, of whom there were five in all, three of them girls, including the two complainants. The applicant came from Victoria, where he was born in 1968 and grew up in a family of five children on a dairy farm owned by his parents. He had some difficulties at school, which he left at about age 16 to go to work. He claims to have been bullied by an older brother who sexually abused him and his brothers and sisters.

On leaving school he worked at various occupations before coming to Queensland with his family, where he has been working for the past 10 years or so as a coach builder. His employer, his work mates and friends speak well of him. Since

these incidents were reported, he has been living at the home of friends, who also speak highly of him.

The schedule of facts presented by the prosecutor at sentencing, shows that count 1 took place between January 2001 and December 2002, when the complainant A was 10 years' old. The applicant entered her bedroom at night, rubbed her chest and breast with his hands, lifted her top and kissed her on the breasts. This was followed on later occasions by the three separate instances of incest. One took place when the complainant went to say goodnight to him in the lounge of the family home; another when she was watching TV with him and the third in similar circumstances, when the other children had gone to bed and her mother was showering.

Count 5 was an occasion on which the applicant licked the complainant's vagina. Count 7 was when the same complainant was 12. She was watching TV when the applicant inserted his fingers in her vagina for what was said to be approximately five minutes. Count 6 was indecent treatment of the other daughter, K, by rubbing her clitoris for about 20 minutes when she was in bed and he came into her bedroom to say goodnight. No violence or threats were used in committing any of these offences.

When matters were reported to the police, the applicant was interviewed and made admissions in respect of all the offences alleged. He pleaded at the first reasonable opportunity and

is very remorseful about what he has done. His relations with his wife had deteriorated during the preceding 10 years or so.

The psychologist who interviewed him said that the applicant had a low sense of self esteem, adding, however, that he remains at risk of re-offending and has a limited capacity to control or understand the consequences of his actions.

An unusual feature of the case is that all of the children, including the complainants, who say they have forgiven him, have provided letters or statements in which they speak well of the applicant. They wish him back home again and that things could be the way they were before. There is no doubt that the applicant has provided adequately for his family in the past and he has no previous criminal convictions of any kind.

The effective sentence imposed for the offences of incest was six years' imprisonment. Such a term is within the range imposed commonly for offences of this kind; see *R v B* [2000] QCA 42; CA No 345 of 1999, 24 February 2000, which is an example that bears this out. The victim there was mildly intellectually impaired and a daughter of the offender, against whom two counts of incest were committed. Some threats were uttered to keep her quiet. On the other hand, the offending had taken place many years before, at a time when the complainant was 14 years’ old.

At sentencing, the offender was suffering from an advanced condition of emphysema and was not expected to live for more than about two years, which may explain the recommendation for parole after two years in that case.

Here of course the applicant committed a total of seven offences during a two year period involving two of his daughters, one of whom was only 10 when the acts of incest occurred or began.

Even taking account of the applicant's admissions and his guilty pleas, his Honour considered that no early recommendation for parole or suspension of sentence was called for. That in my view seems to me to be correct. Having regard to the frequency with which sentences within this range have been imposed in the past for offences of this kind, of which we have had the benefit of seeing a schedule, I do not consider it possible to say that the penalty meted out to the applicant in this case was excessive.

The applicant's ready admissions, his pleas of guilty, the absence of violence or threats of it and his remorse merited some degree of mitigation in his case, but the seriousness of the offence of incest committed against a 10 year old daughter and the applicant's sexual abuse of two of his daughters, makes it impossible, in my opinion, to regard the overall sentence of six years as excessive.

I would consequently dismiss the application for leave to appeal.

WILLIAMS JA: I agree.

JERRARD JA: Yes, I agree with the presiding judge and I add only these matters: that on this application, the applicant suggested that he may have been able to defend the charges and that perhaps he should have and further, that he only pleaded guilty to get a lighter sentence, but it is now far too late for him to consider denying the charges. The information before this Court is that he admitted his guilt to the victims in a pretext telephone call, then to the police in interviews, then to the Court by his pleas of guilty and also to a psychologist upon whose report he relied when seeking a lesser sentence.

The six year term imposed for three offences of incest, in circumstances where he had abused two of his daughters, is consistent with other sentences imposed by this Court or upheld by this Court after pleas of guilty and is not manifestly excessive.

For that reason the application should be refused.

McPHERSON JA: The order is that the application for leave to appeal is dismissed.
