SUPREME COURT OF QUEENSLAND

CITATION:	*R v Weldon* [2006] QCA 504
PARTIES:	**R** **v** **WELDON, Craig Lee** (applicant)
FILE NO/S:	CA No 232 of 2006 DC No 140 of 2006
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Beenleigh
DELIVERED ON:	1 December 2006
DELIVERED AT:	Brisbane
HEARING DATE:	20 November 2006
JUDGES:	Williams and Keane JJA and Chesterman J 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- PARTICULAR OFFENCES - SEXUAL OFFENCES - where applicant pleaded guilty to 10 counts of maintaining a sexual relationship with a child under 16 years with circumstances of aggravation and was sentenced to 20 years imprisonment - applicant was further sentenced to one count of maintaining an unlawful sexual relationship with a child under 16 years of age with a circumstance of aggravation - seven counts of indecent treatment of a child with circumstances of aggravation, five counts of indecent treatment of a child with a circumstance of aggravation and one count of unlawful sodomy with circumstances of aggravation, for which he received 10 years for each count to be served concurrently - where offending behaviour occurred over a period of eight years - where there were 16 different boys abused - whether sentence imposed was manifestly excessive in all the circumstances *R v D* [2003] QCA 547; CA No 259 of 2003, 12 December 2003, cited

R v H [2001] QCA 167; CA No 40 of 2001, 1 May 2001, cited
R v P; *ex parte A-G* (Qld) [2001] QCA 188, CA Nos 328 and 329 of 2000, 18 May 2001, cited
Veen v The Queen (No 2) (1998) 164 CLR 465, cited

COUNSEL: D C Shepherd for the applicant
M J Copley for the respondent

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

[1] **WILLIAMS JA:** I have had the advantage of reading the reasons for judgment of Keane JA. I agree with all that he has said therein. The application for leave to appeal against sentence should be dismissed.

[2] **KEANE JA:** On 23 March 2006, the applicant was convicted, on his plea of guilty, of a number of sexual offences. The matter of sentence was adjourned to 10 August 2006. On that date, he was sentenced to concurrent sentences of up to 20 years imprisonment. A total of 1,828 days was declared as time served under the sentence.

[3] The applicant seeks leave to appeal against the sentences, contending that the sentences of 20 years imprisonment should be reduced to 16 years imprisonment on the grounds that:

(a) the sentences were manifestly excessive;
(b) the learned sentencing judge erred in proceeding on the footing that the only mitigating feature of the case was the applicant's plea of guilty;
(c) the learned sentencing judge erred in rejecting psychiatric evidence as to the likelihood of the applicant re-offending.

Circumstances of the offences

[4] The applicant pleaded guilty to 10 counts of maintaining a sexual relationship with a child under 16 years with circumstances of aggravation. On each of these 10 counts, he was sentenced to 20 years imprisonment.

[5] He was also sentenced to concurrent sentences of 10 years on each of one count of maintaining an unlawful sexual relationship with a child under 16 years of age with a circumstance of aggravation, seven counts of indecent treatment of a child with circumstances of aggravation, five counts of indecent treatment of a child with a circumstance of aggravation, and one count of unlawful sodomy with circumstances of aggravation.

[6] Count 1 charged the applicant with the offence of maintaining. This course of offending began in early 1994 when the applicant abducted a boy, who was then aged 13 years, from his parents. After 18 months the child was found by the police. At that time, the applicant was charged with abduction and given the maximum sentence of two years imprisonment. The child made no disclosures of sexual abuse at that time. When the child was subsequently re-interviewed by police in 2001, he disclosed that the applicant had, during the period of the abduction, sodomised the child on at least two occasions and required the child to sodomise him on over 50 separate occasions. On one occasion, the applicant fellated the child in the presence

of the applicant's nephew and then did the same thing to his nephew in the presence of the child.

[7] Within months of being released from prison in relation to the abduction referred to above, the applicant formed an association with another male child through that child's father. The applicant also formed a relationship with a single mother who was recovering from cancer and who became reliant on the applicant's friendship and assistance. Through her, he formed relationships with other male children; and, in turn, he exploited these relationships to forge still further relationships with male children. He engaged in sexual activities with these children which included fondling, genital exposure, mutual masturbation, fellatio and sodomy. It will suffice to demonstrate the scale of the applicant's criminality, and his hold over his victims, to set out the detail of eight other counts.

[8] Count 3 charged the applicant with the offence of maintaining between 23 December 1998 and 1 January 2000. The victim was the nine year old son of a man who had employed the applicant before he was imprisoned on the abduction charge relating to the victim in count 1. Upon the applicant's release, the man re-employed the applicant, believing the applicant to have been innocent of the earlier charge. This offending began when the child's parents separated, and the applicant began minding the boy. He sodomised the child on at least three occasions. The boy complained only when approached by police.

[9] Count 5 charged the applicant with the offence of maintaining between March 1999 and May 2001. The child was 10 years old when the relationship began. His mother was the single mother referred to above. The applicant tried to sodomise this child on at least 10 occasions. He frequently masturbated and fellated the boy. On one occasion, he tried to insert a dildo into the boy's anus. On another occasion, the applicant involved the child and six or seven other boys in a sexual encounter in which the boys engaged in sexual activity with each other and the applicant. The applicant took the boy camping on about 20 occasions when sexual activity occurred between them. The boy complained only when approached by police.

[10] Count 6 charged the applicant with the offence of maintaining between October 1999 and May 2001. The child was 10 years old at the beginning of this period. The applicant lived next door to the child's parents. The applicant sodomised the child while he was only 10 years of age. On one occasion when the child's parents invited the applicant to their house for a party, the applicant got the child alone in a shed and tried to get him to suck the applicant's penis. The applicant introduced the child to the complainant in relation to count 5: he fellated the boys successively, in each other's presence. The boy disclosed these offences only when questioned by police investigating complaints in relation to the applicant.

[11] Count 7 charged the applicant with the offence of maintaining between October 1999 and March 2001. The victim was a boy who was nine years of age at the beginning of this period. The complainant in count 5 and the complainant in count 7 went to the applicant's property to ride motor bikes. On one occasion, the child saw the applicant fellating the complainant in count 5. The applicant also procured the two boys to fondle each other in the shower while he masturbated. On at least 20 occasions, the applicant got the child to fondle the applicant's penis. The child complained only after being approached by police.

[12] Count 12 charged the applicant with the offence of maintaining between January 2000 and January 2001. The victim was a boy who was nine years old at the beginning of this period: he attended the same school as the complainant in count 5. On one occasion, when the applicant had arranged for this child and six other boys to take their clothes off and wrestle each other, the applicant sucked this child's penis. This child saw the applicant procure the complainant in count 5 to sodomise the applicant, who then had this child sodomise the applicant. This child complained only after being approached by police.

[13] Count 13 charged the applicant with the offence of maintaining between April 2001 and August 2001. The complainant was 12 years old at the beginning of this relationship. The applicant met the child because the child's mother was a customer at the applicant's store. She allowed the child to sleep over with the applicant. On the first occasion that the child slept over, the applicant fellated the child and another boy in the shower, then had this boy fellate him. The applicant sodomised the boy on at least two occasions, and procured the boy to sodomise him. The child complained only after being approached by police.

[14] Count 14 charged the applicant with the offence of maintaining between June 2000 and August 2001. At the beginning of this period, the victim was 12 years of age. The applicant met this child at the home of the complainant in count 5. The applicant sodomised this boy on at least two occasions. The applicant had this boy engage in fellatio and sodomy. This boy participated in the group escapade described in relation to count 5. The applicant masturbated his dogs in this child's presence. This child complained only after being approached by police.

[15] Count 24 charged the applicant with the offence of maintaining between January 2001 and August 2001. The applicant persuaded the mother of an eight year old boy to allow the child to go to the applicant's house to ride motor bikes. There, the applicant sodomised the child on a number of occasions. On one occasion, the applicant got the child to sodomise the complainant in relation to count 13.

[16] In all, the applicant abused 16 boys aged from nine to 15 years in the period between January 1994 and August 2001. Eleven of the boys were under the age of 12 when the offending behaviour occurred or commenced. He sodomised eight of his victims, and attempted to sodomise two others. The full detail of the applicant's offending was contained in a 44 page schedule tendered before the learned sentencing judge. Enough has been extracted, I think, to demonstrate the predatory nature of the applicant's paedophilia, his willingness to betray parental trust and the extent of the dominance he achieved over his prepubescent victims.

The applicant's circumstances

[17] The accused was born on 30 December 1968.

[18] As appears from the report of Professor Barry Nurcombe, the applicant suffered an emotionally crippling childhood, with an alcoholic and abusive father and an emotionally depressed mother.

[19] In March 1991, in the District Court of New South Wales, the applicant was convicted of two counts of indecency with a person under 16 years of age. The victim was a 12 year old boy. The applicant and the victim involved in mutual acts of fellatio. The applicant was sentenced to 300 hours of community service.

[20] In 1994 and 1996, the applicant was convicted of a number of offences for possession of dangerous drugs and firearms.

[21] On 16 November 1997, he was sentenced for the offence of abduction to which reference has previously been made. He was released from this sentence on 23 December 1998. The offences charged in counts 3 to 24 were committed after his release from this sentence. His re-offending commenced shortly after his release.

[22] In April 2001, he was fined for another firearms offence.

[23] Professor Nurcombe's report was dated 26 July 2006. He rated the applicant as being a moderate risk of sexual re-offending. This risk might be reduced by treatment. Professor Nurcombe said:

> "Negative factors are his fixated paedophilia, history of alcohol problems, personality problems, and lack of external supports. Positive factors are his lack of a psychopathic personality, the fact that he does not deny or minimize his sex offences or have attitudes that support or condone sex offences, that he has accepted his homosexuality and seeks to have an intimate relationship with an adult male, and that he has a positive attitude towards intervention … If he were to re-offend, the offences would involve prepubertal males."

The sentence

[24] The learned sentencing judge referred to the victim impact statements as showing the "devastation visited upon" the victims by the applicant.

[25] Unsurprisingly, the learned sentencing judge expressed in strong terms his horror at the applicant's persistent paedophilia and his appalling betrayal of the trust of those who befriended him. His Honour did not accept that the applicant's plea of guilty demonstrated any real remorse on the applicant's part. Once again, having regard to the applicant's history, that is hardly surprising. Nor is it surprising that, in the light of that history, his Honour was not prepared to accept Professor Nurcombe's opinion that the applicant was only a moderate risk of re-offending, or to act upon the view that the applicant has a "positive attitude" to treatment which may lead to rehabilitation.

[26] His Honour regarded the applicant's plea of guilty as "the only mitigating factor".

The application for leave to appeal

[27] The applicant submitted in this Court that, in fixing upon an operative sentence of 20 years imprisonment for the most grievous offences, the learned sentencing judge must have adopted too high a notional starting point, or allowed too little by way of mitigation. By way of elaboration of this submission, it was said that, for offending of this kind which did not involve the use of violence by the perpetrator upon his victims, a head sentence of 20 years imprisonment was at the top of the appropriate range, while allowance for factors in mitigation, such as the circumstances of the applicant's unfortunate childhood and the "only moderate" risk of re-offending, meant that an effective sentence of 16 years imprisonment was appropriate.

[28] None of the authorities cited on behalf of the applicant establish that a notional head sentence of 25 years for offending of this serious, and persistent, criminality was beyond the appropriate range. This was a case of many serious offences committed

upon 16 children. Ten of the counts on which he was sentenced carried a maximum term of life imprisonment.[1] The need to protect the community looms large in this case because of the applicant's callous willingness to exploit friendships to satisfy his fixated paedophilia. In *Veen v The Queen (No 2)*,[2] Mason CJ, Brennan, Dawson and Toohey JJ said:

> "… that the maximum penalty prescribed for an offence is intended for cases falling within the worst category of cases for which that penalty is prescribed … does not mean that a lesser penalty must be imposed if it be possible to envisage a worse case; ingenuity can always conjure up a case of greater heinousness. A sentence which imposes the maximum penalty offends this principle only if the case is recognizably outside the worst category."

[29] It is not necessary to consider whether a life sentence could properly have been imposed in this case, as it was in *R v D*.[3] It is sufficient to say that a notional head sentence of 25 years was open to the sentencing judge.

[30] It was said that the learned sentencing judge erred in failing to take into account the applicant's difficult childhood and its consequences as circumstances which mitigated the seriousness of his offending. On the authorities, however, the deprived childhood which the applicant endured and its consequences are not relevant as a circumstance in mitigation in relation to offences committed with such determination by a mature man who must be held responsible for his actions. In *R v H*,[4] Thomas JA, with whom McPherson JA and Mackenzie J agreed, said:

> "A concern in the present case is the difficulty in knowing what effect to give to the essentially corrupt environment in which the applicant was brought up which he has carried forward into and around his own household. Such a circumstance may attract some sympathy, but the need for deterrence and protection of society makes it difficult for a sentencing Court to offer leniency to persons who continue such a tradition."

[31] The learned sentencing judge did not ignore the applicant's plea of guilty or deny him the benefit of a substantial discount because of the plea. As I have said, a notional head sentence of 25 years imprisonment was open to the learned sentencing judge. The effective sentence of 20 years imprisonment reflected a substantial discount for the applicant's plea of guilty.

[32] As to Professor Nurcombe's report, and his estimate of the prospects of re-offending by the applicant and the applicant's susceptibility to rehabilitation, it is clear that his Honour did not overlook Professor Nurcombe's opinion even though he did not accept and act upon it.

[33] His Honour was not obliged to act upon Professor Nurcombe's opinion; but, in any event, Professor Nurcombe's opinion recognises that, while the applicant's risk of re-offending is moderate, and might be further reduced, those most at risk are

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1 Cf *R v D* [2003] QCA 547 which involved 62 complainants over a 28 year period. In *R v P; ex parte A-G* [2001] QCA 188, 10 complainants were involved. In *R v H* [2001] QCA 167, there were three complainants, but the offending involved violence and gross breach of trust.

2 (1988) 164 CLR 465 at 478.

3 [2003] QCA 547.

4 [2001] QCA 167 at 9 – 10.

pre-pubertal boys. While the applicant may be amenable to rehabilitation, the scale of the applicant's offending, his history of fixated paedophilia, and, consequently, the need to protect vulnerable members of the community from sexual abuse, were sufficient to justify the rejection of the proposition that the possibility of the rehabilitation of the applicant warranted a substantial mitigation of his sentence.

Conclusion and orders

[34] In my respectful opinion, it has not been demonstrated that the decision of the learned sentencing judge was affected by any particular error. Nor can it be said that the sentence was manifestly excessive.

[35] I would dismiss the application for leave to appeal against sentence.

[36] **CHESTERMAN J:** I agree with Keane JA.