

SUPREME COURT OF QUEENSLAND

CITATION: *R v Hancock* [2010] QCA 179

PARTIES: **R**
v
HANCOCK, Graeme Paul
(applicant)

FILE NO/S: CA No 98 of 2010
DC No 3525 of 2009
DC No 684 of 2010

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 16 July 2010

DELIVERED AT: Brisbane

HEARING DATE: 16 July 2010

JUDGES: Chief Justice, Fraser and Chesterman JJA
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. That the application for leave to appeal against sentence be allowed.**
2. That the sentence of 18 months' imprisonment imposed for the offence of indecent treatment be set aside, and that in lieu thereof, the applicant be sentenced to imprisonment for the period commencing on 15 April 2010 and expiring today, 16 July 2010.
3. The concurrent sentences of four months' imprisonment for breach of the supervision order should be set aside, and no further penalty imposed for those contraventions.

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where applicant seeks leave to appeal against a sentence of 18 months imprisonment with parole eligibility after five months and concurrent four month terms imposed respectively for an offence of indecent treatment of a child under 12 years of age and for two contraventions of a supervision order – where applicant

pleaded guilty and was 25 years old when sentenced – where applicant took a photograph of a naked four-year old girl sitting on the beach at Southbank Parklands – where the taking of this photograph constituted an offence of indecent treatment – where applicant disclosed to police that he was subject to a supervision order- where police discovered two other photographs in the applicant’s mobile phone of female children – where applicant's possession of the three photographs of children and his presence at Southbank Parklands contravened the supervision order – where the primary judge sentenced the applicant within the range proposed by both counsel – where applicant was in custody for 10 months prior to being sentenced – whether the sentence was manifestly excessive

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)

COUNSEL: C W Heaton for the applicant
M B Lehane for the respondent

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

- [1] **CHIEF JUSTICE:** The applicant seeks leave to appeal against a sentence of 18 months imprisonment with parole eligibility after five months and concurrent four months' terms imposed respectively for an offence of indecent treatment of a child under 12 years of age and for two contraventions of a supervision order. He pleaded guilty.
- [2] He was 25 years of age when sentenced. He was sentenced on the 15th of April 2010.
- [3] The applicant's criminal history reaches back to the 12th of November 2004 when he was sentenced to five years' imprisonment with parole eligibility after two years for a range of sexual offending in relation to three children aged five, seven and nine.
- [4] The applicant was then, himself, 19 years old. He served that entire five-year term and was then released on the 6th of February 2009 subject to an 18-year supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*. It was only four months after being released that he committed the offence of the indecent treatment of a child to which I now turn.
- [5] Utilising his mobile phone, the applicant took a photograph of the four-year-old girl as she sat naked on the beach at Southbank Parklands. She was with her mother and brother. The applicant made no physical contact with the complainant girl who was unaware that he was photographing her. The mother was alerted and called the police.
- [6] The applicant disclosed to the police that he was subject to the supervision order. It was the taking of the photograph which constituted the offence of indecent treatment. The police then discovered two other photographs in his mobile phone of

female children apparently taken while he was on a train. The applicant's possession of the three photographs of children contravened the supervision order as did his presence at Southbank Parklands.

- [7] The Crown prosecutor submitted to the sentencing Judge that the applicant should be imprisoned for 18 months. Defence counsel submitted that the appropriate range was 12 to 18 months' imprisonment.
- [8] Defence counsel informed the Judge that the applicant suffers from a mild intellectual impairment and adult ADHD and that when aged 10 years he had been sexually abused by an adult stranger. The applicant appreciates his own need for counselling and treatment. He committed this offence at a time when his counsellor was on holidays.
- [9] Following the commission of the offence, the applicant was returned to custody for breach of the supervision order. He remained in custody then for 10 months until the date of his being sentenced on the 15th of April 2010.
- [10] The learned Judge remarked on the temporal proximity of the applicant's offending to the date of his release. His Honour put personal deterrence and community protection at the forefront of his consideration. He acknowledged that the applicant's having been in custody for the preceding 10 months was relevant notwithstanding it was a consequence of the breach of the supervision order. He indicated that he would not, however, give full credit for that period.
- [11] Assuming the Judge gave the applicant credit for a substantial part of that 10 months' period, as I believe was his intention, his Honour has effectively sentenced the applicant for the indecent treatment to more than two years' imprisonment with no assurance of release prior to the expiration of that period. That was, in my respectful view, a manifestly excessive approach.
- [12] It should be observed, in fairness to his Honour, that he sentenced within the range proposed by both counsel. I consider, however, that that range failed to pay appropriate regard to the 10 months' imprisonment already served.
- [13] Whether or not the applicant might have applied for release is by the way. The fact is, the applicant did serve that period of 10 months and, of course, is still in custody three months later.
- [14] The Judge adopted the prosecution description of the offence of indecent treatment as offending "at the lower end of the scale," and it was, because there was no physical contact with the child and the child was completely unaware that the photograph was being taken.
- [15] Even allowing for the commission of the offence only some four months after the applicant's release from custody, it was a case where that 10 months actual imprisonment itself fell within an appropriate penalty range.
- [16] I would order that the application for leave to appeal against sentence be allowed, that the sentence of 18 months imprisonment imposed for the offence of indecent treatment be set aside, and that in lieu thereof the applicant be sentenced to imprisonment for the period commencing on 15 April 2010 and expiring today, 16 July 2010.

- [17] The concurrent sentences of four months' imprisonment for breach of the supervision order should be set aside and no further penalty imposed for those contraventions. As to those contraventions the applicant was adequately punished by the 10 months' custody. Penalties in respect of this indecent treatment and those breaches of the order fell to be endured concurrently in a case like this.
- [18] The applicant's further fate will fall to be considered by reference to the *Dangerous Prisoners (Sexual Offenders) Act* and proceedings taken under that legislation in respect of continuing detention which are set down for hearing on the 28th of October this year although there will now be the prospect of an earlier application.
- [19] The orders are as I have indicated.
- [20] **FRASER JA:** I agree.
- [21] **CHESTERMAN JA:** I agree.