SUPREME COURT OF QUEENSLAND

CITATION:	*R v PAN* [2011] QCA 192
PARTIES:	**R** **v** **PAN** (applicant)
FILE NO/S:	CA No 257 of 2010 DC No 152 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Townsville
DELIVERED ON:	12 August 2011
DELIVERED AT:	Brisbane
HEARING DATE:	25 May 2011
JUDGES:	Margaret McMurdo P, Fraser JA and Jones 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 refused**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to five counts of maintaining an unlawful sexual relationship with a child with aggravation, one count of maintaining an unlawful sexual relationship with a child and numerous other sexual offences – where the complainants were the applicant's four biological daughters and two step-daughters – where the applicant progressively offended against each daughter over a period of about 17 years – where the applicant commenced raping the children at a very young age – where the applicant created an environment of fear and intimidation in the home and manipulated the complainants – where the applicant entered a very late plea after his arraignment on the first day of trial – where the applicant received a head sentence of 17 years imprisonment – whether the sentence imposed was manifestly excessive *R v H* [2001] QCA 167, considered *R v P; ex parte A-G (Qld)* [2001] QCA 188, considered *R v SAG* (2004) 147 A Crim R 301; [2004] QCA 286, considered

COUNSEL:	The applicant appeared on his own behalf M Connolly for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

[1] **MARGARET McMURDO P:** This application for leave to appeal against sentence must be refused for the reasons given by Fraser JA. The sentence imposed appropriately reflected both the grievous nature and effect of the applicant's offending and the sole mitigating feature that the applicant pleaded guilty at a late stage saving his wife and four adult complainants from the trauma of giving evidence.

[2] I agree with the order proposed by Fraser JA.

[3] **FRASER JA:** The applicant was convicted on his pleas of guilty of numerous sexual offences against six children, all of whom with the exception of the eldest and youngest, were the applicant's biological daughters. The six children were part of the applicant's family and all of them regarded him as their father. On each of five counts of maintaining a sexual relationship with a child with the circumstance of aggravation that the applicant raped the child, the applicant was sentenced to 17 years imprisonment. On a sixth count of maintaining a sexual relationship with a child the applicant was sentenced to 13 years imprisonment. The applicant was also sentenced to: eight years imprisonment on each of four separate counts of rape; six years imprisonment on a count of indecent treatment of a child under 12 under care as a guardian; five years imprisonment on each of three counts of indecent treatment of a child under 16 under care as a guardian; and six months imprisonment on one count of sexual assault. All terms of imprisonment were to be served concurrently. The six offences of maintaining a sexual relationship with a child constituted "serious violent offences",[1] so that the applicant will be required to serve a minimum of 80 per cent of the 17 years imprisonment.[2] The sentencing judge declared 460 days pre-sentence custody as time already served under the sentence.

[4] The applicant has applied for leave to appeal against his sentence on the ground that it is manifestly excessive. In order to consider the applicant's contention that the sentence was manifestly excessive it is necessary to describe the nature and extent of the applicant's offending, which occurred over a period of about 17 years. The sentencing judge observed that the gravity and extent of the applicant's behaviour towards each of the six complainants over such a long period of time could not adequately be dealt with in the sentencing remarks. Nevertheless the sentencing remarks paint a clear picture of the applicant's offending and its devastating consequences. It is sufficient for present purposes to present a relatively brief outline of the offences.

[5] The applicant was between 33 and 49 years old when he committed the offences. The age differences between the five older children varied between about one and two years, with only a five month gap between the fifth and the sixth children. The six maintaining offences concerned the five eldest children (in the case of the fourth

---

1 *Penalties and Sentences Act* 1992 (Qld), s 161A(a), s 161B(1), sch 1.

2 *Corrective Services Act* 2006 (Qld), s 182.

eldest child there were two counts of maintaining, one of which involved the circumstance of aggravation that the applicant raped the child). All six children were very young when the applicant commenced his offending against them. During the periods covered by the six maintaining offences the children were aged between four and 14, five and 12, four and 13, about three and 13 (during the combined periods of the two maintaining offences), and four and 11 respectively (from eldest to youngest). The youngest child, who was the complainant in the four separate indecent treatment offences, was aged between four or five and 14 when the applicant committed those offences.

[6] The children were frightened of the applicant. They had good reason to be frightened. He dominated his family and created an environment of fear and intimidation. He used his belt to "flog" the children if he thought they were disobedient to his wishes. The children knew that he would use force without hesitation. The sentencing judge observed that resistance to the applicant's demands was not an option for any of the children. They gave in to his perverted demands without the need for him to use overt threats or violence to secure their co-operation. The applicant also manipulated the children in various ways to secure their silence. He told some of them that if they said anything about his conduct they and their mother would get into trouble, the family would be split up, the children would be separated, and that others within the extended family would suffer. He gave money and lollies to three of the children. He professed his love for the children whilst abusing them.

[7] The sentencing judge summarised the pattern of the applicant's offending as follows:

> "In my view your conduct was predatory. It was perpetrated for your own sexual gratification. Obedience to your demands was ensured by threats; by transfer of guilt; by deception; by bribery; by emotional blackmail, all in varying degrees as between complainants and with respect to individual complainants.
>
> Your conduct was systematic and was a deliberate abuse over a very long period of time, in total perhaps 17 years, in a progressive way starting with your eldest child and continuing through the children in turn until you reached the youngest child. Some abuse continued for a period of time when the family moved interstate but that conduct is not the subject of these charges because it cannot be.
>
> The conduct was, as I've said, deliberately progressive, starting with the eldest and when she began to show resistance you moved on to the next eldest in age."

[8] The applicant progressively engaged in heinous sexual offending against the children. He started raping the five older children when each was very young, at ages varying between about three and six and a half years. He effected the rapes initially by partial penetration and subsequently escalated the offending to full sexual intercourse as each child matured. He also committed other acts of gross indecency, including oral sex. He persisted in carrying out the offences despite objections, crying, complaints of physical pain and, in one case, obvious physical injury. As each child reached her early teenage years and more forcefully voiced her objections, the applicant ceased offending against that child and focused the

abuse upon the younger children. The applicant subjected the youngest child to simulated sexual intercourse. On one occasion he indecently dealt with her at the same time as raping the second youngest child in the bathroom. In January 2008, one of the children told her mother about the abuse. Questioning of the other children revealed that they too had been abused. The applicant's offending continued until the day he was arrested.

[9] The sentencing judge referred to aggravating features of the applicant's offending in the following terms:

> "The pattern of your offending; the time over which it occurred; the fact that all of your daughters were abused; the emotional and psychological blackmail that you perpetrated; the fear and guilt generated by your statements to a number of the girls; and the fact of regular, full penetrative penile intercourse from a very tender age, with respect to a number of them, all contribute to what I regard, and what the community would clearly regard, as being heinous and emotional brutality in a deliberate course of offending. The community, quite rightly, would be horrified and outraged by your offending behaviour. That any man could subject his daughters to such abuse defies rational understanding or explanation."

[10] The children were affected very badly. Their victim impact statements speak eloquently of their miserable childhoods, their anger, and their emotional turmoil. One of the children cut her wrists with a razor blade in an attempt to deal with her emotional pain. She decided to commit suicide but did not go through with the plan because she found out that she was pregnant to a boy of her own age and wanted to look after her baby. The sentencing judge observed that:

> "Each of the complainants [has] been deprived of the joy of a truly loving and emotionally and physically secure childhood. Each of them [has] had a normal childhood stolen from them, wrenched away by your sexual behaviour to serve an unnatural, destructive and entirely self-indulgent sexual perversion. That you could try and disguise your sexual predation by packaging it as a form of proper or genuine love, and I here refer to what was said by [the second eldest child], defies belief."

[11] When the applicant was charged with the offences he did not admit his guilt. At a committal proceeding in February 2009, the four complainants who were by then adults gave evidence and were cross-examined. Over the two day committal hearing the applicant's counsel put to those complainants that they had given untruthful evidence. Following the presentation of an indictment against the applicant, the two youngest daughters and the applicant's son gave evidence at a pre-recorded hearing. It was put to both of the daughters that they were lying and it was suggested to one of them that she and her sisters had concocted false allegations against the applicant.

[12] On the morning of the first day of the trial the applicant decided to plead guilty. In relation to three of the four offences committed against the youngest child the prosecution substituted charges of indecent treatment of a child with circumstances of aggravation for the original charges of rape. No change was made to the charges concerning the other five children. Most significantly, there was no change made to

the most serious charges of maintaining an unlawful sexual relationship with a child. The applicant was then arraigned and pleaded guilty to all 15 charges. The pleas of guilty were properly regarded as being very late pleas.

[13] The sentencing judge took into account that the change of plea saved some of the complainants and the applicant's wife the trauma of giving evidence at the trial, but noted that it did the applicant very little credit after the complainants and the applicant's son had given evidence and been cross-examined on instructions which must have been "blatantly untrue" (with one exception which led to the subsequent amendment of the indictment). His Honour indicated that the applicant's pleas of guilty would be reflected in a modest reduction in the head sentences imposed for the most serious offences. The sentencing judge referred also to a letter of apology the applicant wrote to his wife and children in which he expressed sorrow and sought forgiveness for "the hurt, mistrust, and abuse" he had caused them over the years. Two of the children responded with remarkable letters in which they expressed their forgiveness for everything the applicant had done to them.

[14] The sentencing judge observed that the significant features of the case included that: there were six offences of maintaining an unlawful sexual relationship committed against five of the six complainants; there was a "progressive focus upon each of the complainants in turn from eldest to youngest"; there were "multiple and routine acts of full penile penetration and completed intercourse with a number of the complainants, some commencing at a very young and immature age"; and some of the offending overlapped the end of one relationship and the beginning of the focus upon other girls. His Honour concluded that the case was distinguishable from those which had been cited by counsel and ranked in the worst category of the offence, even if at the lower threshold of that description as a result of the absence of explicit physical violence in the course of the commission of the offences.

[15] At the hearing of the application for leave to appeal against sentence the applicant did not advance any argument in support of the ground that the sentence was manifestly excessive. The applicant asserted that he was in fact not guilty of the offences to which he had pleaded guilty, but he had pleaded guilty to save his family the embarrassment of the trial. However, he did not give any evidence in support of that assertion. The applicant did not attempt to explain how it could be reconciled with his written apology or his instructions to cross-examine the children at the committal hearing and the pre-recording of evidence for the trial. If the applicant's assertion in this Court had any relevance, it was to confirm the wisdom of the sentencing judge's decision to allow no more than a modest reduction of the head sentence to reflect the applicant's pleas of guilty.

[16] The applicant's offences of maintaining an unlawful sexual relationship with a child included most of the features which Jerrard JA described in *R v SAG*[3] as "significant matters substantially increasing a sentence for an offence of maintaining a sexual relationship": a young age of the child when the relationship began; a lengthy period for which that relationship continued; penile rape occurred over a long period during the course of that relationship; there was a parental relationship; and the offender was being dealt with for offences against more than one child victim. However, this case did not have the significant circumstance of a victim bearing a child to the offender. The remaining matter mentioned by

---

[3] (2004) 147 A Crim R 301 at 306 [19].

Jerrard JA was whether 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." There was no evidence of actual physical violence used by the applicant in the course of his offending, but there was emotional blackmail and manipulation.

[17] Not much could be said in the applicant's favour by way of mitigation of the sentence. He had a criminal history comprising mainly drug and dishonesty offences as well as street offences, but no history of sexual offences. His conduct of the case required his victims to give evidence and be cross-examined at the committal and at a pre-recording of evidence. Until the applicant entered his very late guilty plea his victims had been preparing to give evidence and to be cross-examined at trial. The applicant expressed no remorse until the letter of apology to the family, which was sent after he was arraigned on the first day of the trial.

[18] The sentence imposed upon the applicant is in accord with the comparable decisions cited by the respondent. It is necessary to discuss only those which involved multiple complainants.

[19] In *R v SAG*[4] the applicant was convicted after a trial of many sexual offences against his three step-daughters. He had earlier been sentenced to four years imprisonment for offences against a fourth step-daughter. After the trial he was convicted of maintaining an unlawful sexual relationship (which did not involve penetration) with one step-daughter when she was between 13 and 16 years of age. He was convicted of maintaining an unlawful sexual relationship with another step-daughter when she was between 10 and 16 years of age. That relationship included digital penetration and indecent acts. In relation to the third step-child he was convicted of maintaining an unlawful sexual relationship for about seven and a half years, from when she was eight years of age, which involved digital penetration and the child masturbating him. He was also convicted of four counts of rape of that step-child after she had reached maturity. This Court varied a sentence of 14 years imprisonment only to the extent of ordering that it be served concurrently with, rather than cumulatively upon, the four years imprisonment the applicant was already serving. The present case is markedly more serious having regard to the greater number of complainants, the longer periods of the maintaining offences, the younger age of the complainants when the relationship commenced, and the fact that in five of the six maintaining offences, the applicant was guilty of offences involving penile penetration during the course of the relationship.

[20] In *R v H*[5] the applicant entered early pleas of guilty to many sexual offences committed over a period of about 16 or 17 years involving the applicant's daughter, aged between five and 15 years, his step-son aged between nine and 15 years, and a neighbour's daughter, who was nine or 10 years of age. The applicant engaged in penetrative sexual intercourse with his daughter from when she was nine years of age. He forcibly raped the next door neighbour's daughter when she was 10 years old. The applicant was sentenced to 17 years imprisonment for the offence of maintaining an unlawful sexual relationship with his daughter. Lesser, concurrent sentences were imposed for the offences of raping the neighbour's child, sodomy of the applicant's step-son, and incest. The applicant had no relevant criminal history

---

4 (2004) 147 A Crim R 301; [2004] QCA 286.

5 [2001] QCA 167.

and was 41 years of age when sentenced. He co-operated with police, made admissions to the offences when interviewed, and none of the complainants was required to give evidence. The maintaining offence against his daughter was his worst offence, because she suffered from epilepsy, and the applicant threatened, violently assaulted, and ridiculed her during their sexual encounters. Worse features of the present applicant's offending include the greater number of children against whom he offended and the fact that he committed frequent penetrative sexual offending against five of the complainants from a young age ranging from about three to six and a half years. The present applicant's offending merited a sentence which was no less severe than that imposed upon the applicant in *R v H*.

[21] In *R v P; ex parte A-G (Qld),*[6] the applicant pleaded guilty to numerous sexual offences against 10 complainants over a lengthy period including two offences of maintaining an unlawful sexual relationship with a child under 16 with a circumstance of aggravation. The applicant was aged between 30 and 56 years of age at the time of the offending. He was a scout leader to four of his victims and a step-father to one. His offences occurred over two separate periods of 14 years and two years. There were numerous instances of sodomy and oral sex. The applicant co-operated with police, made full admissions, entered an early plea of guilty to an ex officio indictment, and expressed remorse. McMurdo P considered that, absent the co-operation with the authorities, a sentence of at least 20 years would have been within the sentencing discretion, but that the applicant's early plea of guilty, ready admissions to police and co-operation justified a lesser penalty.[7]

[22] The sheer number of children who were sodomised and otherwise sexually abused by the applicant in *R v P* make it an even more serious case than the present. Those children were also very young (including children aged between seven and 14, six and 14, 10 and 14, and nine and 14), yet the present case has the aggravating feature that the children were even younger, and, in some of the maintaining offences, the period of offending was longer. The applicant's breach of trust in *R v P* was gross, in that he abused the trust placed in him as an assistant scout leader and later as scout leader to prey upon young boys, but the gravity of that conduct was not greater than the present applicant's conduct in maintaining long term relationships of a sexual nature with his six children. The present applicant does not have the benefit of the mitigating factors which were regarded as justifying a reduction of the notional sentence in *R v P* of at least 20 years to one of 17 years imprisonment. This Court held in *R v P* that the sentence imposed on that applicant was within the sentencing discretion.

[23] There is no substance in the contention that the sentence was manifestly excessive. In my opinion the sentence was not excessive at all.

Proposed order

[24] The application for leave to appeal against sentence should be refused.

[25] **JONES J:** I have read the reasons of Fraser JA. I respectfully agree with those reasons and the order proposed.

---

6 [2001] QCA 188.

7 [2001] QCA 188 at [24].