SUPREME COURT OF QUEENSLAND

CITATION:	*R v Winchester* [2013] QCA 166
PARTIES:	**R** **v** **WINCHESTER, Barry David** (applicant)
FILE NO/S:	CA No 323 of 2012 CA No 347 of 2012 DC No 2641 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Applications for Extension (Sentence & Conviction)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	24 June 2013
DELIVERED AT:	Brisbane
HEARING DATE:	27 March 2013
JUDGES:	Fraser JA and Margaret Wilson and Douglas JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**In CA No 323 of 2012:** **1. Refuse the application filed on 29 November 2012 for an extension of time within which to appeal against conviction.** **2. Grant the application filed on 29 November 2012 for an extension of time within which to apply for leave to appeal against sentence in respect of count 29 in the indictment.** **3. Refuse the application for leave to appeal against sentence.** **4. Refuse the application for an extension of time within which to appeal filed on 27 February 2013.** **5. Refuse the application for leave to adduce evidence.** **In CA No 347 of 2012:** **1. Refuse the application for an extension of time within which to appeal against conviction and to apply for leave to appeal against sentence filed on 20 December 2012.** **2. Dismiss the notice of appeal and refuse the application for leave to appeal against sentence filed on 27 February 2013.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – POWERS OF COURT ON APPEAL – GENERALLY – where the applicant was convicted after a trial of 21 offences, including four counts of indecent treatment of a child under the age of 16, six counts of rape, two counts of carnal knowledge of a child under 16, one count of attempted rape, and one count of maintaining a sexual relationship with a child – where the applicant's first appeal against his convictions was determined on the merits and was allowed to the extent of setting aside the convictions in respect of the six counts of rape and one count of attempted rape on 16 December 2011 – where a retrial of those counts was ordered – where the appeal against the other convictions was dismissed – where the sentence imposed on the maintaining offence (count 29) was set aside and remitted to the District Court to await the retrial of the seven counts set aside – where the prosecution subsequently entered a nolle prosequi in respect of the seven convictions which were set aside – where the applicant filed an application for an extension of time within which to appeal against the remaining convictions – where the applicant sought leave to adduce further evidence – whether the court has jurisdiction to entertain a second appeal where the previous appeal has been dismissed on the merits – whether an extension of time within which to appeal against the remaining convictions should be granted

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – POWERS OF APPELLATE COURT – GENERALLY – where the applicant also filed an application for an extension of time within which to appeal against the sentences imposed for the offences other than on count 29 – where the applicant's first application for leave to appeal against those sentences was refused on 16 December 2011 – where it is not clear that the application was dismissed on the merits – where the applicant's application for extension of time, notice of appeal and application for leave to appeal against sentence related only to the convictions and not sentence – where the applicant otherwise did not argue that the sentence imposed for the offences other than count 29 were manifestly excessive – whether an extension of time within which to apply for leave to appeal against those sentences should be granted

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant was initially sentenced to a term of 11 years and nine months imprisonment for count 29 – where, during the re-sentencing proceedings, the sentence was reduced to one of six years and

two months imprisonment to be served concurrently with the remaining sentences – where the applicant's parole eligibility date was fixed at about the midpoint of the total period of imprisonment of eight years – where the sentencing judge proceeded to sentence the applicant on the basis that the offending occurred over a period of five months – where the applicant contended that the sentencing judge took into account evidence which related to the subject matter of counts set aside on appeal – whether an extension of time should be granted – whether the sentence imposed on count 29 is manifestly excessive

Grierson v The King (1938) 60 CLR 431; [1938] HCA 45, cited
R v Ali [2008] QCA 39, cited
R v Ball [2006] QCA 186, considered
R v BAO [2004] QCA 445, considered
R v CAE [2008] QCA 177, considered
R v GY [2007] QCA 103, considered
R v HAA [2006] QCA 55, considered
R v KN [2005] QCA 74, considered
R v Lumley [2008] QCA 155, cited
R v MAM [2005] QCA 323, cited
R v MBC [2008] QCA 263, considered
R v Nudd [2007] QCA 40, cited
R v PAD [2006] QCA 398, considered
R v Pettigrew [1997] 1 Qd R 601; [1996] QCA 235, cited
R v WAA [2008] QCA 87, considered
R v WAH [2009] QCA 263, considered
R v Winchester [2011] QCA 374, related

COUNSEL: The applicant appeared on his own behalf
D L Meredith for the respondent

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

[1] **FRASER JA:** After a trial in the District Court before a jury, on 23 December 2010 the applicant was convicted of four counts of indecent treatment of a child under 16 (counts 4, 18, 23 and 25), two counts of unlawfully procuring a child under 16 to commit an indecent act (counts 3 and 10), six counts of rape (counts 5, 7, 8, 15, 20 and 24), two counts of common assault (counts 9 and 19), two counts of carnal knowledge of a child under 16 (counts 11 and 13), one count of attempted rape (count 17), three counts of attempting to unlawfully procure a child under 16 to commit an indecent act (counts 14, 26 and 28) and one count of maintaining a sexual relationship with a child (count 29).

[2] The applicant appealed against his convictions. The appeal was allowed to the extent of setting aside the convictions in respect of the six counts of rape (counts 5, 7, 8, 15, 20 and 24) and of the one count of attempted rape (count 17): *R v Winchester* [2011] QCA 374. The Court rejected the ground of appeal that the verdicts of acquittal and conviction were inconsistent. The Court also rejected

additional arguments challenging the complainant's general reliability and credibility, finding instead that it was open to the jury to conclude that although she "was wrong in some matters of timing or detail, her account was fundamentally accurate": [2011] QCA 374 at [58]. The convictions in respect of the counts of rape and attempted rape were set aside because the Court found that, whilst it was open to the jury to be satisfied beyond reasonable doubt of the appellant's guilt on those counts, there were errors in the directions to the jury upon the question whether any consent given by the complainant was not freely and voluntarily given: [2011] QCA 374 at [59]-[69], [86]-[92], [95], [116]-[119], [121]-[122], [134]. The Court ordered a retrial of the rape and attempted rape counts.

[3] The applicant had also applied for leave to appeal against sentence, which was imposed on 25 March 2011. That application was allowed in relation to the sentence of 11 years and nine months imprisonment for the count of maintaining a sexual relationship with a child (count 29). That sentence was set aside and it was ordered that the re-sentencing proceeding in respect of count 29 be remitted to the District Court to await the retrial of counts 5, 7, 8, 15, 17, 20 and 24 unless otherwise ordered by this Court or by a judge of the District Court. The sentences for the other counts were left intact: five years imprisonment for each count of indecent treatment (counts 4, 18, 23 and 25), procuring a child under 16 to commit an indecent act (counts 3 and 10), and carnal knowledge of a child (counts 11 and 13); three years imprisonment for each count of attempting to unlawfully procure a child to commit an indecent act (counts 14, 16 and 28); and two years imprisonment for each count of common assault (counts 9 and 19). All sentences had been ordered to be served concurrently and 13 days spent in pre-sentence custody had been declared to be time served under the sentences.

[4] The prosecution subsequently elected not to proceed with a retrial and entered a nolle prosequi in respect of the seven convictions which had been set aside. The resulting position may be summarised by modifying the table in Muir JA's reasons in *R v Winchester* [2011] QCA 374 at [5], in which the letters "NG" indicate that the applicant was found not guilty of an offence. I have added the letters "NP" to indicate convictions which were set aside in the first appeal and for which a nolle prosequi was subsequently entered. The maintaining charge in count 29 was based on the eight counts which I have put in bold type, as well as many uncharged acts.

Count	Date and Place	Offence	Comp Age	Details	Evidence
1 NG	On or about the 9th January 2007	Indecently dealing with a child under 16 (procure)	12	The accused asked the complainant to "suck his dick" and she did so. This occurred at the stables.	Interview of complainant 15/08/08 Diary entry 9 January 2007
2 NG	On or about the 15th December 2007	Indecently dealing with a child under 16	13	On the way to the produce shop at Burpengary, the accused took photographs of the complainant child undressed and whipped her, and rubbed his penis on her back, and put his hand on her breasts.	interview of complainant 15/08/08 And interview of complainant 17/08/08

					Diary entry 15 December 2007
3	**On or about the 2nd February 2008.**	**Indecently dealing with a child under 16 (procure)**	**13**	**In the accused's car, parked near the beachfront near Brighton outside the Eventide Nursing Home. The accused told the complainant to play with his "private part" and she did so.**	**interview of complainant 17/08/08** **Diary entry 2 February 2008**
4	**On or about the 5th February 2008.**	**Indecently dealing with a child under 16**	**13**	**At the accused's home, whilst watching television, the defendant started to put his hands down the complainant's pants. She told him to stop but he continued and rubbed her 'private part' with his hands and she pulled away.**	**interview of complainant 17/08/08** **Diary entry 5 February 2008**
5 NP	On or about the 8th February 2008.	Rape	14	The complainant was at the defendant's stables in Board Street, Deagon. He took her into the chaff room and made the complainant bend over while he put his 'dick' in her 'private part'. The defendant 'started moving his dick inside her'. The defendant hit the complainant across the face because she tried to move away.	interview of complainant 17/08/08 Diary entry 8th February 2008
6 NG	On or about the 21st March 2008	Indecently dealing with a child under 16 (permit)	14	The complainant was at the defendant's stables in Board Street, Deagon, in the chaff room. The defendant told the complainant to 'give him head' and she did so.	interview of complainant 17/08/08
7 NP	On or about the 10th April 2008.	Rape	14	At the defendant's home, the defendant put the complainant on the bed and had sex with her.	interview of complainant 17/08/08 Diary entry 10th April 2008

8 NP	On a date unknown between the 10/04/08 and the 14/04/08	Rape	14	The complainant stayed over at the defendant's address for the weekend. The complainant watched television and was told by the defendant to go and lie on the spare bed. She went to sleep, and the accused later woke her up. He had sex with her using force.	interview of complainant 17/08/08 interview of complainant 27/8/08
9 **10**	**On a date unknown between 31/03/08 and the 30/04/08**	Common assault **Indecently dealing with a child under 16 (procure)**	**14**	The defendant took the complainant out to Burpengary to visit a male named Steve. The defendant told the complainant to do a favour for Steve, and slapped her across the face. **The defendant procured the complainant to touch Steve's "private part" a few times.**	**interview of complainant 15/08/08**
11	**Between 31/03/08 and the 30/04/08**	**Unlawful carnal knowledge**	**14**	**At the defendant's home, the defendant had sex with the complainant in the bed.**	**interview of complainant 15/08/08**
12 NG	On or about 1st May 2008	Indecently dealing with a child under 16 (procure)	14	The defendant picked the complainant up whilst she was waiting to go to school at the bus stop. He drove her to an area near Kallangur. He told her to "suck his dick" and she did so.	interview of complainant 9/8/08 interview of complainant 15/08/08 interview of complainant 17/08/08 Diary entry 1 May 2008
13	**On or about the 4th May 2008**	**Unlawful carnal knowledge**	**14**	**The complainant was at the defendant's stables in Board Street, Deagon, in the chaff room. The defendant directed the complainant to undo her pants and pull them**	**interview of complainant 17/08/08** **Diary entry 4 May 2008**

				down, and to bend over and touch the ground with her hands. He put his 'dick' in her 'private part' and kept pushing.	
14	On or about the 29th June 2008	Attempting to indecently deal with a child under 16 (procure)	14	The complainant was at the defendant's stables in Board Street, Deagon. The defendant tried to kiss the complainant and tried putting his tongue in her mouth. He then pulled down his pants down and told the complainant to suck his 'private part'. He was wearing grey shorts and no shirt at the time.	interview of complainant 09/08/08 Diary entry 29 June 2008
15 NP	On or about the 30th June 2008	Rape	14	The complainant was at the defendant's home. He threw her on the bed, pulled down his pants and pulled hers down too, and had sex with her using force.	interview of complainant 09/08/08 Diary entry 30 June 2008
16 NG	On or about 1st July 2008	Taking an indecent photograph of a child under 16	14	The defendant and his Filipino girlfriend, Sam (complainant originally thought her name was Lynne), drove the complainant and another male, Liam out to the Burpengary District Riding School to do some photo work. The defendant and Liam told the complainant that they wanted to see some photos of her and Sam together. They suggested making a porno movie with Liam's video recorder and wanted the complainant to lick Sam's 'private part' and 'pash' her and 'finger' her. The complainant refused and the defendant told her she was so innocent.	interview of complainant 09/08/08 Diary entry 1 July 2008

				The defendant directed the complainant to take off her shirt and ride the horse topless. She refused initially but the defendant cut up her shirt with scissors so she complied. Numerous photos were taken of the complainant.	
17 NP	On or about the 2nd July 2008	Attempted rape	14	The complainant went with the defendant to collect some horse feed. The defendant drove the [complainant] down the dirt track near the produce shop and stopped the car. He told the complainant to undress. He pushed her and put his private part near her front part for a minute, but could not achieve an erection.	interview of complainant 09/08/08 Diary entry 2 July 2008
18 19	**On or about the 7th July 2008**	**Indecently dealing with a child under 16** Common assault	**14**	**The complainant stayed the night at the defendant's home address. The complainant had fallen asleep on a bed in the spare room and woke to find the defendant touching her vagina under her underwear. She describes him as 'fingering her' on the top part of the vagina.** She moved away. It was 1:00am and she couldn't go home. He got angry at her and punched her in the tummy. He kept trying to hug her.	**interview of complainant 09/08/08** **Diary entry 7 July 2008**
20 NP		Rape	14	Later that night the complainant woke to find the defendant with his hands on her hips, his pants off and having sex with her from behind.	See above

21 NG	On or about the 11th July 2008	Procuring a person for carnal knowledge	14	The defendant took the complainant to the Gold Coast. He took her to Gary's house and told her that she had to do this favour. She was told to suck Gary's 'private part' which she did. She then allowed Gary to have sex with her without 'moving her legs or making him feel uncomfortable'. Whilst Gary was having sex with the complainant the defendant was in the room watching.	interview of complainant 17/08/08 Diary entry 11 July 2008
22 NG		Rape	14	After Gary had finished having sex with the complainant the defendant told her to lie down as it was his turn. The defendant put his 'dick' in her 'fanny', moved his hips up and down and told her that she better not 'f'ing' move or close her legs.	See above
23	**On or about the 12th July 2008**	**Indecently dealing with a child under 16**	**14**	**The defendant put his hand up the complainant's shirt, felt her breasts and told her that they were a good shape and size.**	**interview of complainant 17/08/09** **Diary entry 12 July 2008**
24 NP **25**	Between 27/06/08 and 27/07/08	Rape **Indecently dealing with a child under 16**	14	The complainant was at the defendant's stables at 74 Board Street, Deagon, after she had been riding a horse 'Andriel', in the chaff cutting room. The defendant approached and put his 'dick' in her 'private part' and started to move back and forth. **Some time either before or after this the complainant was in the chaff cutting room and the defendant entered and put his hand down her shirt and squeezed her breasts. He told her**	interview of complainant 09/08/08 interview of complainant 17/08/08 Diary entry 4 July 2008

				they were a good size and good shape.	
26	Between 27/06/08 and 09/08/08	Attempting to indecently deal with a child under 16 (procure)	14	The complainant was at Brighton beachfront where she intended to go for a swim. The defendant walked past and called her over. The complainant sat in the defendant's car on the passenger's side whilst the defendant sat on the driver's side. He grabbed her by the wrist and wanted her to feel his 'thing'. He moved her hand up to his groin and tried to get her to rub it.	interview of complainant 09/08/08 Diary entry 19 July 2008
27 NG	On a date unknown between the 31/12/06 and the 09/08/08	Wilfully exposing a child to an indecent video	12-14	The defendant showed a video clip on his phone to the complainant. The video clip consisted of an unknown female having sexual intercourse with a horse. The complainant said that the defendant also had photographs of strippers on his phone.	interview of complainant 17/08/08
28	On a date unknown between the 31/12/06 and the 09/08/08	Attempting to indecently deal with a child under 16 (procure)	12-14	The complainant was walking to Video 2000 to rent a DVD for either her mother or her brother. As she was walking past the Sandgate Bowls Club she saw the defendant and his friends drinking. The defendant told her to get in his car and he drove her down to the corner of Flinders Parade and Sixth Avenue. He asked her to suck his private part and she refused.	Drive around interview 23/08/08.
29	Between the 31/12/06 and the 09/08/08	s 229B Maintaining a unlawful sexual relationship with a child	12-14	Between the 31st December 2006 and the 9th August 2008 the defendant maintained an unlawful sexual relationship with the complainant.	

[5] The applicant then fell to be re-sentenced in the District Court for count 29 maintaining a sexual relationship with a child. On 17 October 2012 the District Court judge who had presided over the trial and sentenced the applicant on 25 March 2011 re-sentenced him to six years and two months imprisonment, to be served concurrently with the sentences imposed on 25 March 2011. The applicant's parole eligibility date was fixed at 3 December 2014. That date is at about the midpoint of the total period of imprisonment of eight years (the sentence of six years and two months imprisonment imposed on 17 October 2012 and the period of 22 months between when the applicant was sentenced on 25 March 2011 and when he was re-sentenced on 17 October 2012). The period of 13 days during which the applicant had been in custody before he was first sentenced was again declared to be time already served under the sentence.

[6] On 29 November 2012 the applicant filed an application for an extension of time within which to appeal, and an appeal against conviction and application for leave to appeal against sentence in respect of the offence of maintaining an unlawful sexual relationship with a child: CA 323/12. In the same matter, on 27 February 2013 the applicant filed a further application for an extension of time within which to appeal.

[7] On 20 December 2012 the applicant filed an application for an extension of time within which to appeal, and an appeal against conviction and application for leave to appeal against sentence, in respect of each of the counts, other than count 29, of which he had been convicted and in respect of which the convictions had not been set aside in the first appeal: CA 347/12. In the same matter, on 27 February 2013, the applicant filed a further appeal and application for leave to appeal against sentence. (Inconsistently with the first set of documents, this document referred to the sentence of six years and two months imprisonment imposed for the maintaining offence.)

Proposed appeals against convictions: CA 323/12 and CA 347/12

[8] The applicant's first appeal against the extant convictions was dismissed on the merits on 16 December 2011: *R v Winchester* [2011] QCA 374. Accordingly, the right of appeal against those convictions, which was created by s 668D of the *Criminal Code* 1899 (Qld), was then exhausted. The Court retains no jurisdiction to entertain a further appeal. So much was established by the High Court's decision in *Grierson v The King* (1938) 60 CLR 431 and many decisions following and applying that case: see, for example, *R v MAM* [2005] QCA 323 at pp 3-4; *R v Nudd* [2007] QCA 40; *R v Ali* [2008] QCA 39; *R v Lumley* [2008] QCA 155; and *R v Lumley* [2009] QCA 172.

[9] Because the applicant lacked the benefit of legal representation, the respondent drew to the Court's attention the possibility of an exception for the respondent's argument that the prosecution election not to proceed with a re-trial of the six counts of rape and the one count of attempted rape might be regarded, in effect, as acquittals which put in doubt the applicant's convictions on the other counts. The respondent referred to *R v Pettigrew* [1997] 1 Qd R 601, in which it was held that the Court had jurisdiction to reconsider the refusal of an application for leave to appeal against sentence where that refusal had been based upon a factual misapprehension shared by the parties and the Court and derived from ambiguity in the order of a lower court: see [1997] 1 Qd R 601 at 615 (Fitzgerald P),

619 (Pincus JA), and 621 (Mackenzie J). It is not necessary to consider the breadth of that exception. As the respondent submitted, the applicant's argument was based upon a misapprehension of the effect of *R v Winchester* [2011] QCA 374. In allowing the first appeal against conviction only to the limited extent of setting aside the convictions in respect of the counts of rape and the count of attempted rape, the Court must have appreciated that the prosecutor might elect not to proceed to a re-trial on those counts or that, in the event of a re-trial, the applicant might be acquitted. Furthermore, Muir JA (with whose reasons Chesterman JA and Fryberg J agreed) held that the verdict on the maintaining count was unaffected by the setting aside of the verdicts on the rape and attempted rape counts because "the remaining guilty verdicts provide sufficient support for it": [2011] QCA 374 at [93]. To that extent the argument which the applicant now seeks to pursue has already been determined against him. It could not justify an exception to the principle that the Court has no jurisdiction to hear a second appeal against conviction where the first appeal has been decided on the merits.

[10] The applicant sought leave to adduce further evidence in each of CA 323/12 and CA 347/12. That is also not a basis for an exception to the principle that the Court has no further authority to set aside a conviction after the dismissal upon the merits of an earlier appeal against the conviction. *Grierson v The King* was itself a case in which the ground of the proposed second appeal was that new facts had come to light which might affect the conviction.

[11] Insofar as the applications for an extension of time in each matter concern proposed appeals against conviction they should be refused on the ground that they are futile because the Court lacks jurisdiction to hear the proposed appeals.

Argument for leave to appeal against sentences other than for count 29: CA 347/12

[12] In the course of oral argument in relation to CA No 347/12, the applicant sought to challenge each sentence other than the sentence in relation to count 29. The respondent argued that the applicant had exhausted his rights of appeal in relation to those sentences because he had earlier appealed against them and those appeals had been finally determined against him on the merits in *R v Winchester* [2011] QCA 374. In fact the applicant had not appealed. He had sought leave to appeal and leave was not granted. Putting that aside, it is far from clear that the applicant's challenge to the sentences were heard upon their merits. In the first appeal, the Court recorded that the applicant sought leave to appeal against the sentences on the grounds that they were manifestly excessive, but the only further reference in the Court's reasons to those applications was the remark that "his re-sentencing must await the outcome of further proceedings in respect of the rape counts": [2011] QCA 374 at [4], [93]. That apparently related to the maintaining count, in respect of which the sentence was set aside with a view to re-sentencing proceedings after any re-trial upon the counts of rape and attempted rape. There was no discussion in the reasons about the merits of the applications for leave to appeal against the other sentences and it appears from the transcript of the argument at the hearing of the first appeal that the merits of those applications were not mentioned. However, it is unnecessary to rule finally upon this point. The applicant's contention that these sentences should be set aside should be rejected for different reasons in any event.

[13] Although the application for an extension of time and notice of appeal and application for leave to appeal filed on 20 December 2012 referred to conviction

and sentence, the stated grounds in each document related only to the convictions. The subsequent notice of appeal and application for leave to appeal against conviction and sentence filed on 27 February 2013 also referred specifically to both conviction and sentence, but the described sentence related only to count 29, the stated grounds related only to the proposed appeal against conviction, and the applicant's extensive written argument also appeared to relate only to that proposed appeal. Furthermore, whilst the applicant said in oral argument that he wished to challenge each of the sentences, he acknowledged that his argument was that the offences of which he was convicted did not in fact happen, and he acknowledged that this argument was inconsistent with his convictions of those offences.[1] Otherwise, the applicant's argument that the sentence was excessive related only to count 29. Also bearing in mind that the sentences on the counts other than count 29 have no influence upon the effective sentence, it is sufficient to record my conclusion that these sentences were not manifestly excessive.

Proposed application for leave to appeal against the sentence on count 29: CA 323/12

[14] The respondent did not oppose the grant of the necessary extension of time for the applicant to apply for leave to appeal against the sentence for the maintaining offence charged in count 29. The time for applying for leave to appeal expired only about a fortnight before the applicant filed his application for an extension of time and notice of appeal and application for leave to appeal against sentence on 29 November 2012 in CA 323/12. It is therefore appropriate to grant the necessary extension of time to consider the merits of the application for leave to appeal against this sentence.

[15] Many of the applicant's arguments in relation to the sentence for this offence concerned his contention that the acquittals by the jury on some counts and the decision by the respondent not to conduct a retrial on the counts of rape and attempted rape so adversely affected the reliability or credibility of the complainant's evidence as to require the setting aside of the remaining convictions. I earlier concluded that the Court lacks jurisdiction to consider the applicant's proposed second appeal against those convictions. It follows that this contention must be rejected and it is not necessary to discuss the various arguments advanced by the applicant in support of it.

[16] Although the application for leave to appeal against sentence did not specify as a ground that the sentence for count 29 was manifestly excessive the applicant argued that ground and the respondent met the argument on its merits. It is appropriate to consider that issue. Count 29 charged that between 31 December 2006 and 9 August 2008 the applicant maintained an unlawful sexual relationship with the complainant. As I have mentioned the maintaining charge in count 29 was based upon the eight counts identified by bold type in the table at [4] of these reasons and many uncharged acts. The sentencing judge proceeded on the basis that the applicant maintained a sexual relationship with the complainant from 2 February 2008 (count 3) until at least 12 July 2008 (which was the latest offence for which a specific date was given: count 23), that is, for a period of about five months when the complainant was 13 and 14 and the applicant was 59. The sentencing judge made the following further findings in addition to the details in bold type in the table at [4] of these reasons.

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1 Transcript 27 March 2013, pp 1-10, 1-11.

[17] The applicant trained horses. He had made it clear to the complainant, who was interested in being around horses, that she could come to his stables and she did so. It must have been clear to the applicant that the complainant had a love of horses and was anxious to leave an unhappy home life. The applicant manipulated the complainant during the relationship, relying upon her love of horses. There was no evidence that the complainant had a sexual interest in the applicant or wished to have a sexual relationship with him. The complainant did not initiate any sexual contact. The applicant created a situation which ensured that he would have opportunities for his sexual gratification. The applicant disregarded the complainant's own ongoing welfare and emotional wellbeing and acted so as to undermine her self-esteem and to make her vulnerable to his manipulations so that the relationship would continue. The applicant "behaved in a predatory and persistent way in gaining her trust and confidence in circumstances where this young girl was susceptible to manipulation."

[18] In relation to count 10, the applicant was driving the complainant to "Steve's" place to pick up a lead horse and told the complainant that she had to do a favour for Steve. When the complainant responded that she did not want to do a favour if it involved sexual intercourse, the applicant became angry, said that the complainant could forget about having "Big Macca", a horse which the applicant promised her, but that the horse would definitely be hers if she did something for Steve. When the complainant refused, the applicant slapped her (the common assault the subject of count 9). The applicant told the complainant that if she didn't do it he would not take her home. As a result the complainant touched Steve's "private part". She did not want to do so and was crying while she did. The applicant laughed. Steve told the complainant to stop and gave the applicant some money. On the way home, the applicant threatened the complainant that she should not tell anybody because he was stronger and had a gun licence, and that he didn't get angry but would "get even". The circumstances of count 10 demonstrated the extent to which the applicant emotionally manipulated the complainant and threatened her to achieve his perverted ends and to ensure that she would keep his conduct secret.

[19] In relation to count 11, the applicant again used emotional blackmail to manipulate the complainant. Before he committed the offence the complainant told him that she did not think that she should be seeing the applicant or engaging in sex with him. The applicant got a bit angry and called the complainant "a nut". After he committed the offence, the applicant allowed the complainant to see the horses in which she was interested. In relation to count 13, after the complainant refused the applicant's request to suck his penis the applicant became angry, told the complainant to go to the chaff room and to bend over and pull her pants down. The complainant refused to pull her pants all the way down and the applicant did so. The applicant told the complainant that Big Macca would be hers. When her back hurt her she stood up and the applicant hit her in the head.

[20] In relation to count 18, the complainant had been mucking out horse stalls and stayed the night at the applicant's house. In addition to the details of that count and its aftermath given in the table in [4] of these reasons in relation to counts 18 and 19, before the complainant left the applicant pulled his stockwhip off the table and showed it to the complainant as a reminder to her not to tell anyone. Count 23 occurred in the stables whilst the complainant was patting Big Macca and count 25 occurred in the chaff room. On the occasion of count 25, the applicant told the complainant that no one would believe her if she told anybody because the applicant

was an adult, the complainant was a child, and nobody believed children. The applicant also told the complainant that Big Macca was "nearly hers".

[21] In addition to the charged offences, there were other occasions when the applicant procured the complainant to suck his penis and felt her breasts, or tried to do so, whilst making comments about them. On the latter occasions the applicant slipped his hand under the complainant's singlet. He did that "a fair bit". There were also six to eight other occasions when the applicant inserted his penis into the complainant's vagina whilst they were in the chaff room. There was another occasion in the chaff room when, before the applicant had sex with the complainant, he wanted her to suck his "private part". In addition to the two common assaults of which the applicant was convicted (counts 9 and 19) the applicant was violent towards the complainant on other occasions. The complainant was unable to be specific about the time and circumstances, but said that it happened "quite a few times" and "heaps of times"; the applicant got angry and slapped her across the face, hurting her.

[22] The sentencing judge found, consistently with the jury's verdict, that the applicant knew throughout the relationship that the complainant was under 16 years of age. The sentencing judge referred to the significant age discrepancy between the applicant and the complainant, and that he did not end the relationship of his own accord: a pretext phone call made by the complainant after she had complained to police demonstrated that the applicant desired the relationship to continue and was upset when it didn't happen. The sentencing judge regarded the following as aggravating features of the maintaining offence: it involved both the two counts of unlawful carnal knowledge and also the other occasions, not charged as offences, when the applicant penetrated the complainant's vagina with his penis; his prostituting of her to "Steve", that the applicant engaged in penile penetration of the complainant with no protection; the applicant's use of violence and threats of violence on multiple occasions, his use of emotional blackmail and other manipulation to achieve his sexual aims, and his use of those techniques to ensure the complainant's silence; and the applicant had assumed a position of responsibility in relation to the complainant (by allowing her to come to his stables to help him out and by collecting her in his car, including on an occasion where she had been waiting for her school bus).

[23] The sentencing judge found that the applicant humiliated and degraded the complainant to undermine her self-esteem and make her emotionally vulnerable to his manipulation. The sentencing judge gave as an example that the applicant told her that once she was not a virgin nobody would want her, and he dismissed her as "useful trash". The sentencing judge found that the applicant's conduct had a markedly adverse affect on the complainant, affecting her psychologically and contributing to her moral corruption, particularly by submitting her to a form of prostitution. That was obvious both from the way in which the complainant presented herself during the police interviews and pre-recorded evidence tendered at the trial and also from the complainant's evidence. The complainant suffered a serious ongoing effect including lack of trust in any person, especially men, a sense of detachment, depression, anger and shame, and nightmares, suicidal thoughts, and feelings of worthlessness. These effects had persisted since the original sentence.

[24] The sentencing judge referred in particular to one suicide attempt. In the complainant's 9 August 2008 interview, she spoke about an act of vaginal

penetration. The complainant said that the applicant told her, whilst she sat crying, "that she was just a no-hoper and [he] had never met anyone who was such a stuff-up in life and that she should go and hang herself." The sentencing judge found that the complainant then cut her wrists with one of the blades that was on the floor next to her. No evidence was found of this in a subsequent medical examination by Dr Skellern. The sentencing judge found, on the basis of the evidence at the trial, that the explanation for the lack of findings by Dr Skellern was in the complainant's evidence that she did not cut her wrists hard because it started to hurt her. This suicide attempt was referred to in a page of the complainant's diary after the last May 2008 entry in which she wrote that it was her fault that the applicant was "doing this because I love horses and now I will never have a life". Beneath the note there was a drawing which the sentencing judge interpreted as representing somebody slitting their wrists.

[25] The sentencing judge took into account also the requirements for deterrence. The sentencing judge found that there were low prospects of rehabilitation for the applicant, with a resultant need to protect other children from him as well as to provide a specific deterrence against further offending. (It may have been implied in the applicant's submissions that he challenged these findings, but they were certainly open to the sentencing judge on the evidence to which the sentencing judge referred.)

[26] The sentencing judge observed that the applicant did not have the mitigating factors of remorse or co-operation with the administration of justice. The complainant was required to be cross-examined when her evidence was pre-recorded. The sentencing judge did take into account by way of mitigation that the applicant was 64 with no previous convictions for a like offence. The applicant had previous convictions for offences of violence, but they were low level examples of that kind of offending and were dated. The sentencing judge regarded them as having no relevance to the sentence. The sentencing judge also took into account that the applicant had demonstrated a work ethic inside and outside the racing industry, that he had undertaken voluntary work for a local RSL, that his incarceration caused hardship to his young family, particularly because of potentially serious health issues suffered by his wife. In addition, the sentencing judge took into account that as a result of the applicant's conviction and incarceration his wife had difficulty in arranging for the immigration to Australia of her young sons, who were supported by the applicant, and that this had taken a toll on her and on the applicant. The sentencing judge also took into account that the effect of imposing a sentence of imprisonment upon the applicant for the maintaining offence was that, according to the applicant, his wife would have to return to her home in the Philippines with their three year old son. The sentencing judge observed that those circumstances could not overwhelm the requirements of deterrence and community denunciation for the applicant's offending. The sentencing judge referred also to the fact that at the time of the earlier sentence hearing the applicant was being medicated for various conditions, and directed the medical reports to be provided to the prison authorities.

Further evidence

[27] The applicant applied for leave to introduce as fresh evidence a Myspace page which the applicant contended related to the complainant and a Facebook page and photographs which were said to show that the complainant applied for a job as a stripper. In relation to the Myspace page, which was said to identify the complainant's age as 20 and 21 years, the sentencing judge pointed out that it was

dated 18 May 2007, which was before the trial. It was not before the jury, who disbelieved the applicant's evidence that he believed honestly and reasonably that the complainant was aged over 16. For the reasons given by the trial judge the document is irrelevant. In relation to the Facebook page and the photographs, the sentencing judge considered that this went to the applicant's belief about the complainant's age and the jury had rejected the applicant's evidence on that point. The applicant had submitted to the sentencing judge that this evidence also suggested that no credence should be given to the complainant's statements in her victim impact statement, such as that she lost her innocence as a result of the applicant morally corrupting her. The sentencing judge rejected the submission, pointing out that the document was dated 19 March 2011, which was years after the applicant had committed the last of the offences of which he was convicted. The prosecutor had submitted that, not only did the document not support the applicant's evidence at trial that the complainant told her and others that she was a stripper at the time of the alleged offences, the document could be construed as conduct by the complainant in 2011 which was a consequence of the applicant's morally corrupting conduct. The sentencing judge did not act on that submission, but made it plain that he did not take into account this material either in aggravation or in mitigation of the sentence. None of this material is significant in relation to the applicant's sentence.

Consideration of the applicant's arguments

[28] The applicant argued that the sentencing judge erred in finding, as an example of the applicant's conduct in humiliating and degrading the complainant, that he told her that nobody would want her once she was not a virgin, dismissed her as "useful trash", and commented "[v]irgins, you've gotta love them". The argument was that the complainant's evidence should not be accepted because it related to the subject matter of count 15, the conviction for which was set aside on appeal. The argument should not be accepted. The conviction on that count, like the convictions on the other counts of rape and the count of attempted rape, was not set aside on the ground that the complainant's evidence was not credible or reliable: see [2] of these reasons. It remained open to the sentencing judge to accept the complainant's evidence of what the applicant said on the occasion upon which she alleged that the applicant had sexual intercourse with her. (That is so even though, favourably to the applicant, the sentencing judge did not accept the concession by the applicant's former counsel that it was appropriate to sentence the applicant on the basis that the sexual intercourse the subject of the rape counts had occurred. Instead the sentencing judge took into account only those counts in bold in the table in [4] of these reasons and the complainant's evidence of other sexual offences, including unlawful carnal knowledge, which were not the subject of specific charges.)

[29] The applicant argued that the sentencing judge was incorrect in the findings concerning the complainant's suicide attempt. I note that in *R v Winchester* [2011] QCA 374 at [56] Muir JA noted that a careful medical examination on 15 August 2008 did not reveal any trace of any wound or scarring resulting from the complainant's cutting of her "wrists with one of the blades that was sitting next to" her, which was said to have occurred after the occasion the subject of the charge in count 24. On the other hand, as Muir JA noted at [57], the jury did not accept the applicant as a credible witness; the jury were entitled to conclude that his credibility had been destroyed by the explanations he gave on oath about the admissions he had made in the pretext telephone call, which spoke eloquently that he had and wished

to continue a sexual relationship with the complainant. The applicant relied upon the fact that the doctor saw no scarring on the complainant's wrists, but that was taken into account by the sentencing judge. The applicant referred also to cross-examination of the complainant in which the complainant, when asked whether she said that she had cut her wrists and attempted suicide, asked the court to look at her wrists. That might be regarded as adversely affecting the complainant's credibility but it did not require the sentencing judge to reject her evidence of the suicide attempt. The applicant also submitted that this could not be taken into account in the sentence because it was said to have occurred on the occasion of the alleged rape which had been the subject of count 24, a count which was not pursued after the appeal. Nevertheless, it remained open to the sentencing judge to accept the complainant's evidence about the derogatory remarks she said were made by the applicant, including the suggestion that she should "go and hang herself", and that she cut her wrists in the way she described. The applicant is entitled to the benefit of the presumption of innocence in relation to count 24, but it does not follow that the sentencing judge was obliged to reject the complainant's evidence of other events.

[30] The applicant argued that the sentencing judge wrongly took into account the submissions on sentence made by counsel who had represented him on the first day of the sentence hearing, 5 October 2012, whose instructions the applicant had subsequently withdrawn. The main point of concern for the applicant seemed to be that counsel had conceded that the sentence to be imposed for the maintaining charge should be at least five years imprisonment. However, the sentencing judge observed that he appreciated that the applicant sought a lower head sentence than had been conceded by counsel and that the applicant also sought an early parole eligibility date so that he would not be required to serve any additional time by virtue of the sentence imposed on 17 October 2012. There was no unfairness to the applicant in the way the sentencing judge proceeded.

[31] The sentencing judge referred to many decisions relating to sentence for maintaining offences but gained most assistance from *R v KN* [2005] QCA 74, in which an application for extension of time within which to apply for leave to appeal against sentence was refused on the ground that the sentence was not manifestly excessive. That offender was sentenced to eight years imprisonment for maintaining a sexual relationship with a child, four years imprisonment on each of seven counts of incest, and two years imprisonment on each of two counts of indecent dealing with a child under the age of 12 years. The complainant was the offender's stepdaughter. The offending occurred over a period of five years, commencing when the complainant was nine years of age with indecent dealings. The first act of intercourse occurred shortly before the complainant's twelfth birthday and sexual intercourse thereafter occurring regularly. In addition to the seven acts of incest identified in the indictment there were a number of uncharged acts of intercourse forming part of the relationship. The offender had no prior convictions, was well regarded and a hardworking member of the community. Unlike the applicant, that offender pleaded guilty, and the sentencing judge regarded the plea as deserving of "substantial credit" in moderating the sentence. The sentencing judge considered that if the offender had been convicted after a trial the appropriate sentence would have been 11 years imprisonment. The Court distinguished cases in which a longer term of imprisonment was imposed where an offender used physical violence. Even so, in relation to the argument that the sentence should have been moderated further by a recommendation for early

release, Jones J found no error in the sentencing judge's approach of reducing the head sentence to eight years imprisonment rather than imposing a lengthier term and making a recommendation for early release. Jerrard JA agreed that the sentencing judge could have imposed a higher head sentence coupled with a recommendation for release on parole at earlier than the midpoint of that longer head sentence so that the sentence was not manifestly excessive. The President agreed that the sentence of eight years imprisonment with no recommendation for parole was not manifestly excessive.

[32] The sentencing judge remarked that although the offending in *R v KN* spanned five years (rather than the five months in the applicant's case) and that the offending commenced with a girl as young as nine years of age (with regular sexual intercourse from shortly before the complainant's twelfth birthday) who was the offender's stepdaughter, the offender pleaded guilty, there was no violence or threats of violence, and he did not prostitute the child.

[33] The sentencing judge referred to *R v HAA* [2006] QCA 55, in which the offender was convicted after a trial of a maintaining offence and one count of rape and 15 counts of unlawful carnal knowledge during the course of that relationship. His application for leave to appeal against the sentence of 12 years imprisonment was dismissed. The sentencing judge regarded that case as more serious because, although there was no evidence of physical violence and the child was not prostituted, the charged period was much longer, there was a "protective relationship" in that the complainant was the granddaughter of the offender's de facto partner, and that offender was convicted also of other sexual offences, in particular, indecent dealing with another child. I note also that the complainant in that case was probably only about nine years of age when the unlawful relationship commenced and the rape offence was a circumstance of aggravation.

[34] In another decision to which the sentencing judge referred, *R v BAO* [2004] QCA 445, the Court refused an application for an extension of time within which to apply for leave to appeal against a sentence of nine years imprisonment for one count of maintaining a sexual relationship with a child with a circumstance of aggravation, one count of sodomy, and one count of indecent dealing with a circumstance of aggravation. That offender was a mature man without relevant previous convictions. Unlike the applicant he pleaded guilty. The period of the maintaining offence was about three years and the complainant was aged about nine or 10 when the relationship commenced. There were regular acts of oral, vaginal and anal penetration and indecent dealings during the charged period. It was also an aggravating feature of the offence that the applicant was a family friend in a close relationship with the complainant's parents. On the other hand, unlike the applicant's case, that offender entered an early plea of guilty, there was no suggestion of violence, and that offender did not prostitute the complainant. Williams JA, with whose reasons the President and Mackenzie J agreed, endorsed the view of the sentencing judge that, after a trial, a sentence of at least 10 years could have been imposed and that would have carried with it the automatic declaration that the offender was convicted of a serious violent offence, thereby requiring him to serve 80 per cent of the term.

[35] Although *R v KN*, *R v HAA*, and *R v BAO* lacked some of the aggravating circumstances of the applicant's offence, they were more serious cases, particularly because the maintaining offence in each case persisted over a much longer period than did the applicant's offence and the child was much younger than the

complainant. That is reflected in the more severe sentences in those cases. They are consistent with the sentence imposed upon the applicant being within the sentencing judge's discretion, but they are of very limited value as comparable sentencing decisions.

[36] The applicant relied upon the sentence imposed on appeal in *R v WAA* [2008] QCA 87 of three years imprisonment. The complainant in that case was about 10 or 11 years old, the charged period was nine months, and the offender was the complainant's stepsisters' grandfather. Those circumstances were very serious, but, as the sentencing judge pointed out, the offending was less serious. That offender touched the complainant in the genital region on a number of occasions; he was acquitted of the charges of unlawful carnal knowledge and the maintaining offence was based only upon instances of indecent treatment. As the sentencing judge also pointed out, another distinguishing fact was that the offender was in poor health and imprisonment would subject him to additional hardship. *R v WAA* does not justify a conclusion that the sentence imposed upon the applicant was manifestly excessive.

[37] The applicant relied upon the sentence of four years imprisonment which was not disturbed in *R v GY* [2007] QCA 103. The sentence was imposed after a trial and the offender was not remorseful. More serious features of that offence were that the complainant was aged between six and 14 years and the relationship was over the much longer period of some eight years. On the other hand, that offender was acquitted of the only count involving penile penetration, a count of rape, and the particulars of the offence were described in broad terms as being that the offender rubbed his penis against that complainant's vagina, sometimes to the stage of ejaculation. The sentencing judge rightly referred to the distinguishing facts that there was no penile penetration involved, there were no threats of violence or actual violence, and that offender did not prostitute the child. As the sentencing judge also pointed out, the decision was only that the sentence was not manifestly excessive. It has no real value as a comparable sentencing decision in this case.

[38] The applicant relied upon the sentence of five years imprisonment imposed on appeal in *R v PAD* [2006] QCA 398. The case is not useful in the present context because the effective sentence imposed on appeal was 12 years imprisonment imposed for two offences of rape which occurred, not during the course of the unlawful sexual relationship, but after that complainant turned 16. The convictions on those counts were declared to be convictions of serious violent offences, carrying the consequence that the offender would be required to serve 80 per cent of the 12 year period before being eligible for parole. Holmes JA, with whose reasons Keane JA and Jones J agreed, made it clear that those sentences reflected the overall criminality of the offender's conduct. There was no separate discussion of the proper range of sentences for the maintaining offence. Furthermore, as the sentencing judge pointed out, the maximum penalty for which that offender was liable was 14 years imprisonment whereas the maximum penalty for which the applicant was liable was life imprisonment.

[39] The applicant relied upon the sentence of five years imprisonment imposed on appeal in *R v CAE* [2008] QCA 177. The more serious circumstances of that offending included that the offender was the complainant's stepfather and in a position of trust, the complainant was aged only between seven and nine, the period of the maintaining offence was about two and a quarter years, and the particulars of the offence involved rape offences (although not including

vaginal/penile rape). As the sentencing judge pointed out, however, whilst the applicant is not guilty of any rape offence, he did commit offences involving penile/vaginal penetration and, unlike the offender in *R v CAE*, he was violent and threatened violence and prostituted the complainant. Fryberg J with whose reasons Muir JA and Ann Lyons J agreed, considered that if the sentencing judge had found that uncharged acts of intercourse and the acts of sodomy alleged by the complainant had occurred, the sentence of six years imprisonment imposed by the sentencing judge could not have been challenged: [2008] QCA 177 at [41]. Having regard to the more serious features of the applicant's offences, *R v CAE* does not support a conclusion that the sentence imposed upon the applicant was not within the sentencing judge's discretion.

[40] The applicant relied upon *R v Ball* [2006] QCA 186, in which an application for an extension of time within which to apply for leave to appeal against sentence was refused on the ground that the appeal would have no reasonable prospect of succeeding. That offender was sentenced to seven years imprisonment with the recommendation for post-prison community-based release after two years and nine months in respect of a maintaining offence in the course of which the offender had unlawful carnal knowledge of the complainant (for which he was sentenced to a lesser, concurrent term). The complainant was 12 or 13 years old, similar to the age of the complainant in this case. The period of the relationship does not clearly appear from the reasons, but it is noted that the charge alleged that the relationship existed between 1 July 2001 and 15 April 2003, so that it may be assumed that the period was much longer than in the present case. In that case the child had fallen pregnant when she was only 12 or 13, an aggravating circumstance which is not present here. Importantly, however, that offender pleaded guilty, albeit after the complainant's evidence had been pre-recorded and she had been cross-examined, and, as the sentencing judge noted, there was no suggestion of violence, threats of violence or prostitution. Furthermore, the Chief Justice (with whose reasons Holmes JA and Helman J agreed) held that the sentence of seven years imprisonment with parole recommended after two and three-quarter years was "simply unassailable", a decision which does not imply that a more severe sentence could not have been imposed. This decision supplies some support for the sentence imposed upon the applicant.

[41] The applicant also cited *R v WAH* [2009] QCA 263, in which an application for leave to appeal against a sentence of six years imprisonment, with eligibility for parole after three years, was refused. That offender was sentenced to the lesser, concurrent terms of imprisonment on four counts of rape and three counts of indecent treatment. The rape offences involved digital penetration by the offender of his seven year old step-granddaughter. The unlawful relationship was maintained for three years. There were also numerous uncharged acts relied upon for the maintaining charge. In relation to those matters the case was more serious than the present, but there was no suggestion that the offender had used violence or threats of violence or that he had prostituted the child. Perhaps more significantly, Keane JA, with whose reasons Chesterman JA and P Lyons J agreed, considered that the sentence imposed on that offender was "distinctly moderate": [2009] QCA 263 at [69]. The refusal of the application for leave to appeal in that case does not imply that a more severe sentence could not have been imposed or that the sentence in this case was excessive.

[42] The applicant referred to *R v MBC* [2008] QCA 263, in which an application for extension of time to appeal against the sentence of five years imprisonment, and

lesser, concurrent terms for three counts of indecent treatment of a child under 16 who was a lineal descendant, one count of rape, and one count of indecent dealing, was refused. That was a more serious case insofar as the offender maintained an unlawful sexual relationship with his daughter for more than two and a half years. There was, however, no suggestion of violence or threats of violence or prostituting of the complainant, and nor was there any penile/vaginal penetration. In any case, the refusal of the application conveyed nothing about the adequacy of the sentence; Keane JA, with whose reasons Muir JA and Douglas J agreed, that there was "no prospect at all that this Court would conclude that the sentence imposed in this case was excessive…": [2008] QCA 263 at [25].

[43] This survey of sentences imposed for the same offence suggests that the sentence imposed upon the applicant was at or near the top of the range of sentences within the sentencing discretion but it does not justify a conclusion that the sentence was manifestly excessive. A severe sentence was required by the particular circumstances and consequences of the applicant's offences, which were unusually appalling even in the context of similar offending considered in comparable decisions. I refer in particular to the circumstances summarised in [22] – [24] of these reasons. In addition, it is necessary to have regard to the need for specific and general deterrence, referred to in [26] of these reasons, and the limited mitigating factors referred to in [27] of these reasons. It must also be borne in mind that the effective sentence of eight years imprisonment with parole eligibility at about the midpoint of that period was intended to reflect the criminality in all of the applicant's offences. I would hold that the sentence was not manifestly excessive.

Proposed orders

[44] I would make the following orders:

CA No 323 of 2012

1. Refuse the application filed on 29 November 2012 for an extension of time within which to appeal against conviction.
2. Grant the application filed on 29 November 2012 for an extension of time within which to apply for leave to appeal against sentence in respect of count 29 in the indictment.
3. Refuse the application for leave to appeal against sentence.
4. Refuse the application for an extension of time within which to appeal filed on 27 February 2013.
5. Refuse the application for leave to adduce evidence.

CA No 347 of 2012

1. Refuse the application for an extension of time within which to appeal against conviction and to apply for leave to appeal against sentence filed on 20 December 2012.
2. Dismiss the notice of appeal and refuse the application for leave to appeal against sentence filed on 27 February 2013.

[45] **MARGARET WILSON J:** I agree with the orders proposed by Fraser JA and with his Honour's reasons for judgment.

[46] **DOUGLAS J:** I agree.