SUPREME COURT OF QUEENSLAND

CITATION:	*R v DBF (No 3)* [2013] QCA 382
PARTIES:	**R** **v** **DBF** (applicant)
FILE NO/S:	CA No 219 of 2013 CA No 333 of 2012 DC No 135 of 2012 DC No 286 of 2012 DC No 349 of 2012
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Conviction) Sentence Application
ORIGINATING COURT:	District Court at Ipswich
DELIVERED ON:	17 December 2013
DELIVERED AT:	Brisbane
HEARING DATE:	5 December 2013
JUDGES:	Holmes and Fraser and Gotterson JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. The application for an extension of time within which to appeal against conviction is refused.** **2. The application for leave to appeal against sentence is refused.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN REFUSED – where the applicant was convicted after trials of serious sexual offences against his two older daughters and, after pleading guilty, of similar counts involving his youngest daughter – where the applicant had unsuccessfully appealed his convictions on the offences committed against the older daughters – where the applicant applied for an extension of time within which to appeal his conviction on the indictment concerning the youngest daughter – where the application was made over 12 months after conviction – where the applicant deposed that he chose to plead guilty to spare the complainant the ordeal of cross-examination – where the applicant contended that he was wrongly convicted because the locations particularised in the indictment as being where the offences

took place were incorrect, there was no medical evidence to support the complainant's allegations, and others might have been responsible for the child's abuse – whether there was a sufficient explanation for the delay in his application – whether the proposed appeal had any prospects of success – whether any miscarriage of justice occurred

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant was convicted after separate trials of serious sexual offences against his older daughters and, after pleading guilty, of similar counts involving his youngest daughter – where the offences involved three counts of maintaining a sexual relationship, seven counts of indecent treatment with the aggravating feature that the complainants were his lineal descendants, five counts of rape and one count of deprivation of the youngest daughter's liberty – where the applicant was given a head sentence of 17 years in respect of the count of maintaining an unlawful sexual relationship with the youngest daughter, with an automatic serious violent offence declaration, and lesser sentences on the remaining charges – where the sole ground of appeal was that the sentences were manifestly excessive – where the offences involved a variety of forms of sexual abuse committed over a 13 year period – where the youngest daughter suffered from serious physical and intellectual disabilities – where it was open to the sentencing judge to reflect in the sentence for the maintaining offence involving her both the gravity of that offence and the overall criminality of the applicant's conduct to all three daughters – where the applicant's plea of guilty to the offences involving the youngest daughter was of limited value, given that he chose to go to trial on the counts involving the other girls – whether the sentences were manifestly excessive

Meissner v The Queen (1995) 184 CLR 132; [1995] HCA 41, cited
R v CAP [2009] QCA 174, considered
R v DBF (No 1) [2013] QCA 244, related
R v DBF (No 2) [2013] QCA 245, related
R v G [2002] QCA 381, considered
R v H [2001] QCA 167, considered
R v PAN [2011] QCA 192, considered
R v Robinson [2007] QCA 99, considered
R v SAG (2004) 147 A Crim R 301; [2004] QCA 286, considered
R v Tait [1999] 2 Qd R 667; [1998] QCA 304, cited
R v Wade [2012] 2 Qd R 31; [2011] QCA 289, cited

COUNSEL: The applicant appeared on his own behalf
B J Merrin for the respondent

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

[1] **HOLMES JA:** The applicant was convicted after separate trials of serious sexual offences against two of his daughters, A and B, and, after pleading guilty, of similar offences against his youngest daughter, C. In respect of A, he was convicted of one count of maintaining a sexual relationship, with the aggravating circumstance that she was his lineal descendant; three counts of indecent treatment with the same aggravating circumstance; and two counts of rape. He was convicted of one count of maintaining an unlawful sexual relationship with B, with the aggravating circumstance that she was his lineal descendant; three counts of indecent treatment of her with that aggravating circumstance; a similar count of indecent treatment with the further aggravating circumstance that B was then under 12 years; and two counts of rape. In respect of C, he was convicted of maintaining an unlawful sexual relationship; one count of indecent treatment of her with the aggravating circumstance that she was his lineal descendent; one count of deprivation of liberty; and one count of rape.

[2] The applicant was sentenced for all offences on 15 November 2012. The longest of the sentences imposed was 17 years imprisonment in respect of the count of maintaining an unlawful sexual relationship with C. (The maximum penalty for each of the offences of maintaining a sexual relationship was life imprisonment.) He initially appealed against his convictions on the charges involving A and B and sought leave to appeal against the sentences imposed in respect of all three indictments. In his outline of argument dated 28 June 2013, he asked that the pleas of guilty in respect of the counts involving C be set aside. The Court heard and dismissed the conviction appeals,[1] but adjourned the application for leave to appeal against sentence.

[3] On 2 September 2013, the applicant applied for an extension of time within which to appeal against his convictions on the indictments concerning C, notwithstanding his plea of guilty to those counts. That application and the application for leave to appeal against sentence in relation to the counts on all three indictments fall to be determined now.

The extension of time application

[4] In considering whether to grant an application for an extension of time within which to appeal, the court will consider the length of the delay, the explanation for it and whether it is in the interests of justice to grant the extension. The last of those considerations "may involve some assessment of whether the appeal seems to be a viable one".[2]

Explanation of the delay

[5] In his application for an extension of time to appeal against his conviction, the applicant makes the following unsworn statement:

> "At the time of conviction/sentencing, I was under stress to the extent that I couldn't read anything – let alone court transcripts or

---

1 *R v DBF (No 1)* [2013] QCA 244; *R v DBF (No 2)* [2013] QCA 245.
2 *R v Tait* [1999] 2 Qd R 667.

> legal documents. Even if I had read them at that time or within the first 6 months of incarceration, I would not have understood what I was reading, nor would I have had the ability to think about what was said."

[6] The sequence of events leading up to the applicant's sentence for the offences against C was as follows. On 27 August 2012, a nolle prosequi was entered in respect of an existing indictment containing the charges which concerned C, and a new indictment was presented which contained four counts against the applicant. He was arraigned on it and entered guilty pleas to those counts. At that stage, he had already been convicted by juries on the indictments concerning A (in June 2012) and B (in July 2012). The allocutus was administered and in response to the question as to whether he had anything to say as to why sentence should not be passed upon him, the appellant answered "No". The sentence hearing was then adjourned. After various de-listings and transfers the applicant was sentenced on all counts involving the three girls on 15 November 2012. His counsel on that day acknowledged that he had previously pleaded guilty to the indictment concerning C and there was no need to arraign him again.

[7] It was over 12 months between the applicant's conviction of the charges involving C on 27 August 2012 and his application for an extension of time on 2 September 2013. Even if one were, firstly, to accept the assertion that he was too stressed to read material for six months after his incarceration and, secondly, to assume that it was necessary for him to do so in order to appreciate that there was some issue as to the guilty plea, the balance of the period remains unexplained.

A viable appeal?

[8] To succeed in an appeal against his conviction on pleas of guilty, it would be necessary for the applicant to demonstrate that a miscarriage of justice had occurred. That is not readily done:

> "A court will act on a plea of guilty when it is entered in open court by a person who is of full age and apparently of sound mind and understanding, provided the plea is entered in exercise of a free choice in the interests of the person entering the plea. There is no miscarriage of justice if a court does act on such a plea, even if the person entering it is not in truth guilty of the offence."[3]

The applicant might be able to establish a miscarriage of justice if he were able to show that he had not intended to admit guilt or did not appreciate what the charges were or that some improper pressure had been placed on him to force him to plead guilty. But as Muir JA observed in *R v Wade*: [4]

> "[I]t will normally be impossible to show a miscarriage of justice unless an arguable case or triable issue is also established."[5]

[9] In submissions at the sentence hearing, the applicant's counsel said this as to the significance of his plea of guilty

> "[I]t wasn't a strong case from what I could see but he insisted on pleading to it. But there's been pre-trials on it I understand,

---

3 *Meissner v The Queen* (1995) 184 CLR 132 at 141.
4 [2012] 2 Qd R 31.
5 At [51].

> involving the child giving evidence...of the cases...it wasn't the strongest in my submission. But you've still got to give some recognition to his plea. His plea is not based on an acceptance of any facts. He just doesn't want to expose his daughter to that sort of treatment that he saw occurs for people on the witness box."

[10] The grounds of the applicant's proposed appeal are expressed as follows:

> "I was not in residence at the times and locations articulated in the complainant's statements.
>
> In some areas of statement, the complaint was not living at the locations at the time the sexual assaults allegedly occurred."

[11] The maintaining charge in respect of C alleged that the offence occurred "between the thirty first day of December 2006 and the nineteenth day of August 2010 at Minden and elsewhere", while the remaining charges were alleged to have occurred at Springfield Lakes on dates unknown in periods, respectively, between 31 December 2006 and 1 January 2009 (indecent dealing), 31 December 2007 and 1 April 2010 (deprivation of liberty) and 22 July 2010 and 23 December 2010 (rape).

[12] In his affidavit filed in support of his application, the applicant deposes that he pleaded guilty to the charges because he did not want C subjected to a stressful cross-examination. He goes on to say that his ex-wife (in whose care C presumably was) did not live at Minden after March 2006. He deposes that he lived at Springfield Lakes only for a two year period between March 2007 and March 2009, after which he lived until 22 July 2010 at Springfield, not Springfield Lakes. He also says, without further explanation, that "the complainant is also disputing where she actually lived and during what period of time". In his outline of argument, he says that he is not aware of any medical evidence to support C's allegations, and suggests that two people who shared a house with the child and his ex-wife in 2010 might have been responsible for any sexual abuse of her. The basis of that suggestion is that they were known to own chicken wire, ropes and bandannas, all objects of a kind said to have been used in the abuse of C.

[13] Here, the applicant does not say that he did not understand the nature of the charges or what he was pleading guilty to; he could hardly do so, having sat through two previous trials on very similar offences. Nor does he suggest that there was any pressure placed on him to plead guilty. What he says, consistently with what his counsel submitted at sentence, is that he chose to plead guilty to spare C the ordeal of cross-examination. That affords no basis for supposing that there was a miscarriage of justice. If there were a mis-identification in the indictment of the locations at which the offences were committed (which does not seem to be demonstrated even on the applicant's account for the indecent dealing and deprivation of liberty charges), that would hardly go to show that he was innocent of the offences. The question as to whether there was medical evidence as to the abuse of C does not take his argument any further. Nor is there any credible basis given for the suggested involvement of others in the offences. Nothing in the applicant's material suggests any likelihood of a successful appeal against conviction.

[14] The application for an extension of time should be refused.

The application for leave to appeal against sentence

[15] The sole ground of the appeal for which leave was sought was that the sentences were manifestly excessive.

The factual background

[16] Schedules of facts were tendered without objection in respect of each complainant. The applicant had commenced a sexual relationship with each of the older girls when she was about 10 years old. A, the oldest, described an incident at that age in which she saw her sister, B, performing fellatio on the applicant. The applicant had touched her, A, on the breast area and tried to persuade her and B to kiss him and each other. More intense sexual abuse commenced when she was about 12 years old, occurring a couple of times a week. It included the applicant's massaging her breasts, performing cunnilingus on her, rubbing his genitals against her, and, in the guise of a massage, rubbing oil between her buttocks and along her perineum. At one stage A made, then withdrew, a complaint to police. The applicant at that point conceded to her that he needed to cease his conduct, but after a few months he resumed it and continued it until she was 16 years old.

[17] The indecent treatment counts involved incidents in which the applicant rubbed his genitals against the child's genitals or buttocks and ejaculated on her body. The two rapes involved the applicant's inserting his finger into A's vagina. They occurred while he was massaging the girl, as did one of the indecent treatment offences. The first of the rapes caused her considerable pain and some bleeding. The second was less painful; having performed it, the applicant masturbated himself to ejaculation.

[18] The first of the indecent treatment charges involving B occurred when she was between seven and 10 years old. Her sister, A, was lying on the bed with her, both of them naked. The applicant was also naked. He asked the girls to kiss each other, but they refused. He kissed A while rubbing B's upper thigh. The maintaining count entailed the applicant's touching and licking B's breasts, rubbing her genitals with his finger and penis, making her lick his testicles, performing oral sex on her and requiring her to perform oral sex on him. The abuse intensified when she turned 13 and continued until she was 15.

[19] The first of the rapes consisted of B's performing fellatio on the applicant. The second rape occurred when she was aged 13 or 14. The applicant asked her to give him a massage and took her clothes off. He rubbed her vagina and then attempted to penetrate her, but succeeded only in inserting his penis between her labia. The experience was painful for the child. The remaining indecent treatment offences similarly occurred when she was between 13 and 14. In the first, the applicant twice licked B's nipple with his tongue. In another incident, he made her sit on him unclothed and move herself up and down on his penis. In the remaining incident, he gave her some vodka and smoked a joint with her before entering her room and masturbating in front of her.

[20] The third daughter, C, was disabled, suffering from cerebral palsy and chronic arthritis. She was described as having a reading age of six to seven and an IQ of 62. While her mother was at work, the applicant regularly tied the child's legs and arms together with rope or chicken wire, taped her mouth and blindfolded her with a bandanna before touching or raping her. Sometimes he moved his body against

her, ejaculating on her. According to the schedule of facts, these acts commenced when C was 11 years old with an incident when the applicant tied her up before hearing her mother's return and freeing her. The applicant points out, correctly, that at the commencement date alleged in the indictment for the sexual relationship, C was 12 years old, not 11. To the extent that the schedule referred to the tying-up incident when she was 11, it was irrelevant, and the sentencing judge was led into error in referring to the child as being 11 when the unlawful sexual relationship commenced. Nothing, however, turns on that mistake.

[21] The indecent treatment offence and the deprivation of liberty occurred when C was aged between 13 and 14. In the first, the applicant took C to her bedroom, put sticky-tape on her hands and blindfolded her before pushing her onto her bed and removing her clothes. He kissed her stomach, throat and chin and then kissed, licked and left bite marks on her back. He told her that if she informed anyone, he would murder her. The deprivation of liberty charge concerned an incident when C had walked into a room to see the applicant on top of her sister, B. When B left the room, the applicant pushed C into her bedroom, handcuffed her and blindfolded her. She was left in that condition for about half an hour, during which she screamed constantly, until B returned and released her. The rape charge involved, as well as the applicant, a female friend of his. The woman and the applicant lay on either side of C, the former playing with her hair, kissing her back and simulating intercourse, while the applicant inserted his penis in the girl's vagina.

[22] The two older girls made victim impact statements which were tendered, as were two statements in which their mother spoke, respectively, on her own behalf and on behalf of C. A and B both described having experienced anxiety and depression in consequence of the applicant's acts, a constant feeling of insecurity and difficulty having relationships with men. Each had given birth to a child quite young, and each expressed her anxiety that the child would be harmed in a similar way. C was said to have suffered anxiety, become violent in her behaviour to others and attempted suicide.

The applicant's antecedents

[23] The applicant had committed the offences over a period from when he was aged 27 to when he was aged 40. He was 42 years old at the time of sentencing. He had left school in Grade 10 and worked as a salesman. His only criminal history consisted of a breach of a domestic violence order, for which he was placed on a good behaviour bond with no conviction recorded. His mother's de facto husband had abused him physically and sexually. He had suffered from depression and other health ailments and also had gone through a period of alcoholism. His counsel said that before his arrest, he had formed a relationship with another woman who continued to support him.

The sentencing judge's remarks

[24] The sentencing judge referred to the decision of this court in *R v SAG*.[6] Jerrard JA, delivering the leading judgment in that case, listed a number of matters bearing on the severity of the sentence imposed for an offence of maintaining a sexual relationship. They were

---

6 [2004] QCA 286.

> "• a young age of the child when the relationship thereafter maintained first began;
> • a lengthy period for which that relationship continued;
> • if penile rape occurred during the course of that relationship;
> • if there was unlawful carnal knowledge of the victim;
> • if so, whether that was over a prolonged period;
> • if the victim bore a child to the offender;
> • if there had been a parental or protective relationship;
> • if the offender was being dealt with for offences against more than one child victim;
> • if 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."[7]

He went on to observe:

> "Matters which mitigate the penalty include conduct showing remorse, such as the offender voluntarily approaching the authorities, or seeking help for all the family; co-operation with investigating bodies, admissions of offending, co-operating with the administration of justice, and sparing the victims from any contested hearing."[8]

[25] The sentencing judge noted that many of the factors identified in *SAG* existed in the case before her. The children were all quite young at the start of the relationship in each case, and the offences took place over a lengthy period of time. C was the subject of penile rape. The applicant was in a parental relationship with the victims and in C's case had used both physical violence and threats of physical violence. There was no element of remorse shown in relation to the two older girls. The eldest had made a complaint which she subsequently withdrew, after which the offending continued. The sentencing judge described the case as "in the worst category", particularly given C's significant disability. Her Honour regarded a sentence "at the highest end of the range" as appropriate, but discounted it taking into account the plea of guilty in relation to C. She sentenced the applicant to 12 years imprisonment in respect of the maintaining offences involving each of A and B, and 17 years imprisonment in respect of that involving C. Each of those sentences attracted a serious violent offence declaration, with the consequence that the applicant must serve 80 per cent of the 17 year sentence before becoming eligible for parole.

The applicant's submissions here

[26] The applicant did not rely on any comparable cases, but pointed to the problems of gaol overcrowding and the violence of inmates. Otherwise, his submission consisted, effectively, of a plea in mitigation to the effect that he had complied with his bail conditions, that his prospects of employment and of renewing his current relationship after such a lengthy period of imprisonment were poor, and that he had provided financially for his daughters. He also took issue with some of the contents of the victim impact statements, as to which there was no dispute at sentence. There is nothing in the applicant's submissions which would point to any error on the part of the sentencing judge.

---

7 At [19].
8 At [20].

The decisions relied on by the respondent

[27] There remains the question, however, whether there is any substance in the ground of appeal, that the sentences imposed were manifestly excessive. The respondent relied on five decisions in addition to *R v SAG*: *R v H*;[9] *R v G*;[10] *R v Robinson*;[11] *R v CAP*;[12] and *R v PAN*.[13] It was submitted that, given the level of depravity involved in the offences, which were committed against the applicant's own daughters, the appropriate sentence was between 16 and 20 years imprisonment.

[28] *R v H* concerned a 41 year old applicant who was sentenced to 17 years imprisonment for sexual offences committed over a 16 year period against his own daughter when she was aged between about five and 15 years old, his step-son, who was aged between nine and 15 years at the relevant time, and a neighbour's daughter who was aged nine or 10. He had raped the neighbour's child on a single occasion, raped his daughter over a number of years, giving rise to a count of maintaining a sexual relationship with her, and had sodomised his step-son. He was sentenced to 17 years imprisonment in respect of the count of maintaining, that sentence being subject to the consequences of a serious violent offence declaration. The sentencing judge had commenced his considerations on the basis that a sentence of 20 years imprisonment was appropriate, but reduced it to recognise the applicant's full admissions to police and plea of guilty to an *ex officio* indictment. Thomas JA, delivering the leading judgment, observed that although the commencing level of 20 years seemed high, it was not beyond a proper range as a commencing point for sentencing, and the court should not interfere with the ultimate result of 17 years imprisonment.

[29] In *R v G*, the applicant was sentenced to 16 years imprisonment on a count of maintaining a sexual relationship with a child (which appears to have pre-dated the serious violence offence provisions, since it did not attract a declaration) and lesser sentences on a variety of other sexual offences committed against six girls, four of whom were under his care, aged between 10 and 13, and three boys, aged between eight and 15. Those offences included a count of maintaining a sexual relationship with one girl, as well as seven counts of carnal knowledge of her. One of the female complainants was his own daughter. The boys were forced to allow the applicant to perform fellatio on them or to perform fellatio on him. Against the background of the number and seriousness of the offences, the sentence of 16 years imprisonment for the maintaining charge was held to be within a proper exercise of discretion.

[30] In *SAG*, the applicant was sentenced to a number of concurrent sentences, the longest of which was 14 years, for sexual offences against three step-daughters. That sentence was imposed cumulatively on a sentence of four years imprisonment with which he was already serving in respect of sexual offences committed on a fourth step-daughter. The other offences for which he received longer sentences consisted of maintaining and indecent assault charges in respect of all three girls, as well as rape charges in respect of one of them. He went to trial on all of those counts. The most serious of the offences was a sexual relationship the applicant maintained with one of the girls for a period of seven and a half years, starting when

---

9 [2001] QCA 167.
10 [2002] QCA 381.
11 [2007] QCA 99.
12 [2009] QCA 174.
13 [2011] QCA 192.

she was eight. He had begun by putting his hand on her vulva and then teaching her to masturbate him, which she did at least once a week. He also engaged in washing her, including her genitals and in digital penetration of her. After her 18th birthday, he had sexual intercourse with her. He was convicted of rape on the basis that she was pressured into intercourse by threats and also by the hope of saving one of her sisters from similar abuse.

[31] The applicant in *SAG* was sentenced to 14 years imprisonment on each of the four counts of rape and the maintaining count. (The maximum penalty for maintaining an unlawful sexual relationship at the time of his offending was 14 years.) The court considered that sentence *per se* to be within a proper range, but held that, imposed cumulatively on the four year sentence, it was manifestly excessive. The appeal was allowed and the sentence varied by ordering that it be served concurrently with the applicant's existing sentence of imprisonment.

[32] In *R v Robinson*, the 55 year old appellant maintained a sexual relationship with the daughter of friends; she was aged between five and seven years at the relevant times. The maintaining charge included two counts of rape of the child. The appellant was convicted after a trial and was sentenced to life imprisonment for the maintaining offence and each of the rapes. After a review of relevant cases, Keane JA, with whom the other members of the court agreed, observed that, had there been a plea of guilty, the authorities would support a sentence in that case of up to 18 years, not a life sentence. It might be argued that, in the absence of a plea of guilty, the range of sentence should extend to 20 years imprisonment, but the reality was that if that sentence were to be imposed the appellant would not then become eligible for consideration for parole until he had served 16 years (given the effect of a serious violent offence declaration); whereas had he received a life sentence, he would be eligible after 15 years. To avoid that anomaly, a sentence of 18 years imprisonment should be substituted.

[33] In *R v CAP*, the applicant, who had pleaded guilty, was sentenced for a variety of offences, including four counts of rape of his daughter, five counts of rape of three nieces, four counts of carnal knowledge against the order of nature and one count of assault occasioning bodily harm while armed. The offending spanned a decade. In respect of the rapes of his daughter, he was sentenced to 19 years imprisonment and in respect of the other rapes, 17 years imprisonment. There was a 16 year delay between the last of the offences and complaint; the offences occurred before the serious violence offence provisions took effect. The applicant's daughter was seven when he first raped her and between 15 and 17 years when the remaining rapes were committed, the last resulting in her becoming pregnant with his child. The nieces were between nine and 17 years old. The applicant had an extensive criminal history, although not for sexual offences. The court noted that his conduct "was at the upper levels of offending" for such offences. His limited co-operation and absence of genuine remorse – the plea of guilty was indicated only one week before trial and each complainant had been cross-examined at committal – limited the ameliorating considerations. The application for leave to appeal against sentence was dismissed.

[34] In *R v PAN*, the applicant had pleaded guilty, albeit at a late stage, to counts of maintaining sexual relationships with six girls, four of whom were his biological daughters and all of whom regarded him as their father. Five of the maintaining counts included, as a circumstance of aggravation, that the appellant had raped the

child. The children ranged in age between four and 14 when the offences were committed. The applicant was a manipulative and violent man, and controlled his victims through fear. He began by partially penetrating them and escalated the offending to full intercourse, as well as involving them in oral sex. He had a criminal history which did not include any sexual offences. This court upheld sentences of 17 years imprisonment, which attracted serious violent offence declarations, imposed on each of the maintaining charges which involved rape.

Conclusions

[35] It is not entirely clear what her Honour meant by saying that the case was "in the worst category" making a sentence "at the highest end of the range" appropriate; if by that she meant that it was such as to make a life sentence the proper commencing point, I would respectfully disagree. But the cases which the respondent relied on indicate, in my view, that the sentence ultimately imposed, although high, was not outside a proper exercise of discretion. The applicant's offending against his three natural daughters over a 13 year period was egregious, involving a variety of forms of sexual abuse by the person to whom the three girls should have been able to look for protection. His abuse of C was particularly heinous; it involved considerable cruelty to a child who was utterly vulnerable.

[36] The learned sentencing judge was entitled not only to reflect the gravity of the applicant's conduct towards C in the sentence imposed for the maintaining charge against her, but to increase that sentence to reflect the overall criminality of his conduct.[14] In sentencing in that way, so as to reflect the offending behaviour as a whole, the fact of the plea of guilty in respect of the offences involving C was of limited value, given that the applicant chose to go to trial on the counts involving A and B.

Orders

[37] I would refuse both the application for an extension of time within which to appeal against conviction and the application for leave to appeal against sentence.

[38] **FRASER JA:** I have had the advantage of reading the reasons for judgment of Holmes JA. I agree with those reasons and with the orders proposed by her Honour.

[39] **GOTTERSON JA:** I agree with the orders proposed by Holmes JA and with the reasons given by her Honour.

---

[14] *R v Nagy* [2004] 1 Qd R 63.