SUPREME COURT OF QUEENSLAND

CITATION:	*R v Margaritis* [2013] QCA 401
PARTIES:	**R** **v** **MARGARITIS, Luke Euthimios** (applicant)
FILE NO/S:	CA No 75 of 2013 DC No 8 of 2013
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	20 December 2013
DELIVERED AT:	Brisbane
HEARING DATE:	25 September 2013
JUDGES:	Muir and Gotterson JJA and Philippides J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Grant leave to appeal against sentence.** **2. Allow the appeal against sentence.** **3. Substitute for the sentence imposed on Count 1 on the indictment, a sentence of four years imprisonment.** **4. Otherwise dismiss the application.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant was a teacher at the secondary school where the complainant was a pupil – where the applicant was found guilty of one count of maintaining an unlawful relationship of a sexual nature with a child under 16 years with a circumstance of aggravation, nine counts of indecent treatment of a child under 16 years, and one count of supplying dangerous drugs to a minor – where the applicant was sentenced to five years imprisonment for the maintaining offence and lesser concurrent sentences for the remaining offences – where the applicant contends that the sentence is manifestly excessive and that the learned sentencing judge erred in sentencing on the basis that it was "a special case" – where the trial judge said "that this is a special case because of the very serious effect the offending has had on your victim" in sentencing the applicant – where the applicant contended that the learned trial judge had

	treated the victim impact statement akin to expert evidence that the offending was the sole cause of the totality of the impacts recorded in it by the complainant, notwithstanding evidence of the complainant's troubled childhood – where the prosecutor at sentence submitted that the sentence imposed should be not less than three years imprisonment – where the applicant's counsel submitted that the appropriate period of imprisonment was three years – whether the sentence imposed was manifestly excessive – whether the learned sentencing judge erred in sentencing the applicant on the basis that it was "a special case"
	Criminal Code 1899 (Qld), s 210(1), s 229B *Drugs Misuse Act* 1986 (Qld), s 6(2)(a)
	R v C [1994] QCA 318, cited *R v Goodman; ex parte Attorney-General (Qld)* [1996] QCA 415, cited *R v HAN* (2008) 184 A Crim R 153; [2008] QCA 106, cited *R v L* [2002] QCA 268, cited *R v L* [1996] QCA 316, cited *R v M* [1994] QCA 47, cited *R v May* [1999] QCA 127, cited *R v Morgan; ex-parte Attorney-General (Qld)* [1996] QCA 397, cited *R v Singh* [2006] QCA 71, cited
COUNSEL:	S A Lynch for the applicant M R Byrne QC for the respondent
SOLICITORS:	Trevor Watt and Associates for the applicant Director of Public Prosecutions (Queensland) for the respondent

[1] **MUIR JA**: I agree with the reasons of Gotterson JA and with the orders he proposes.

[2] **GOTTERSON JA:** This is an application for leave to appeal against sentence. After a trial over three days in the District Court at Brisbane, on 13 March 2013, the applicant, Luke Euthimios Margaritis, was found guilty of one count of maintaining an unlawful relationship of a sexual nature with a child under 16 years with a circumstance of aggravation, nine counts of indecent treatment of a child under 16 years, and one count of supplying dangerous drugs to a minor.

The circumstances of the offending

[3] The applicant was a teacher at a secondary school for boys at Ipswich. The complainant was a pupil at the school. The applicant had been the complainant's form teacher during 1994, the year immediately prior to the offending. During 1995, the applicant was the complainant's teacher for several subjects. That year the complainant was in Year 9 and was aged 13 and then 14 years.

[4] The maintaining count, Count 1, alleged an offence against s 229B(1) of the *Criminal Code* (Qld) which was particularised as having occurred between 28 February

and 1 December 1995. The circumstance of aggravation alleged was that during the course of the relationship, the applicant committed an offence of a sexual nature for which he was liable to imprisonment for five or more but less than 14 years: s 229B(1B). Upon conviction for this offence, the applicant was liable to a sentence of 14 years imprisonment.

[5] Counts 2 to 11 were particularised acts which occurred with the complainant. Count 2 alleged an offence against s 210(1)(e) of the *Code*. It related to a period around March or April 1995 when the complainant visited the applicant's house with a school friend of a similar age after discussions with the applicant at school. The complainant went to his friend's house initially. They then went to the applicant's house. He provided them with approximately three alcoholic pre-mixed Cola drinks each. The applicant then put on a pornographic movie which depicted both heterosexual and homosexual activity. The three of them watched it.

[6] Counts 3 and 4 alleged offences against s 210(1)(e) and s 210(1)(a) of the *Code* respectively. They occurred on the same occasion, about 10 days after Count 2. The complainant and his friend attended the applicant's house at his behest. When they arrived, a heterosexual movie was playing. They were shown it (Count 3). While the movie was playing, the applicant went to the kitchen of his house and returned with "a little brown bottle". He told them it was "Amyl". The applicant inhaled some of it and then showed the complainant and his friend how to inhale it. They followed his lead. The applicant then went to his bedroom with the friend and returned after 15 minutes. Upon the return, the complainant went to the bedroom with the applicant. He removed his clothes at the applicant's request. The applicant then performed fellatio on the complainant for about 10 or 15 minutes until the complainant ejaculated (Count 4).

[7] Counts 5, 6, 7 and 8 were related in time. Counts 5 and 7 alleged offences against s 210(1)(a) of the *Code*; Count 6 an offence against s 210(1)(e) thereof; and Count 8 an offence against s 6(1) of the *Drugs Misuse Act* 1986 in the aggravating circumstance that the person supplied with the dangerous drug was a minor: s 6(2)(a). On this occasion the complainant attended the applicant's house on his own. This was around "August to September" 1995. The complainant had been invited there after school by the applicant. When he arrived, the complainant was shown a pornographic movie which was playing on a television set (Count 6). He thought it depicted oral homosexual activity. In the lounge room, the applicant gave the complainant Amyl-nitrate to inhale and alcoholic drinks to consume. The applicant started touching the complainant's penis through his school shorts (Count 5). After the complainant began to become aroused, the applicant invited him into the bedroom where the applicant committed fellatio on the complainant until he ultimately ejaculated (Count 7). The applicant then produced a "joint" of Cannabis sativa for the complainant (Count 8). He smoked most of it and then went home.

[8] Counts 9, 10 and 11 were also related in time. Counts 9 and 10 alleged offences against s 210(1)(a) of the *Code* and Count 11 an offence against s 210(1)(c) thereof. They occurred at the applicant's house in "October, November maybe" of 1995. The incident was identified by the complainant as the last between them. The complainant believed that he had become intoxicated by the time he went into the bedroom with the applicant. The complainant was unable to gain an erection. He told the applicant something along the lines that "it's not going to work today" or "I'm not in the mood for this today". Thereupon, the applicant began to rub the

complainant's penis through his shorts (Count 10). Whilst this was occurring, the complainant began to touch the applicant's penis through his clothing (Count 11). The applicant then committed fellatio on the complainant's flaccid penis (Count 9). The incident ended when the complainant dressed himself and went home.

[9] In his evidence-in-chief,[1] the complainant stated that similar acts to those particularised had occurred on a weekly basis during the maintaining period alleged, except when the applicant had travelled overseas in the school holidays. They were typified by the applicant providing the complainant with alcoholic drinks and Amyl-nitrate and then performing fellatio on him until he ejaculated.

The sentences

[10] The applicant was sentenced on 13 March 2013. Convictions were recorded for all counts on which the applicant was found guilty. On Count 1, he was sentenced to five years imprisonment; on each of Counts 2, 3, 6 and 8, to twelve months imprisonment; on each of Counts 5, 10 and 11, to two years imprisonment; and on each of Counts 4, 7 and 9 to three years imprisonment. All sentences are to be served concurrently.

The application for leave to appeal

[11] By an application filed on 2 April 2013, the applicant has applied for leave to appeal against sentence. The application is focused upon the five year sentence for Count 1. Two grounds of appeal are advanced, namely:

1. That the sentence is manifestly excessive; and
2. that the learned sentencing judge erred in sentencing on the basis that it was "a special case".

[12] Before considering each ground individually, I propose to outline the circumstances of the complaint, the applicant's personal circumstances and antecedents, and matters taken into account by the learned judge.

The circumstances of the complaint

[13] At the time of the trial, the complainant was 31 years of age. He had been a forklift driver for about six years but was currently unemployed. He was the father to two children, one aged six years and the other four years. His relationship with their mother had ceased.

[14] The complainant testified that after the last incident, the applicant began to distance himself from him. He treated the complainant "completely different" and would not speak to him any more.[2] The complainant managed to complete Year 10 but then left school part way through Year 11.

[15] The complainant told no one about the offending conduct until he mentioned it to a general practitioner when he was about 20 years of age. Later, he told his ex-partner (the mother of his children) midway through 2005, having met her in 2004. He was provoked to tell her because of difficulties he was having with oral sex. She encouraged him to go to the police. They went together. He felt discouraged by the reaction he got at the reception desk and could not go through with making a complaint.

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1 AB 35 LL21-45.

2 AB 58; Tr1-52 LL1-4.

[16] Ultimately, the complainant made a formal complaint seven years later, in February 2012. A pretext telephone call in which the complainant and the applicant participated, was arranged and recorded.

[17] At the trial, the complainant attributed a failure on his part to complete secondary education to the applicant. He said that the applicant's conduct towards him was the "primary reason" why that happened.[3] He referred to this in a Victim Impact Statement dated 13 March 2013[4] which was tendered at the sentence hearing.

[18] This document also included the following statements by the complainant:

> "The offending has affected me forming relationships and holding relationships. It has affected the trust I have in authority.
>
> I feel that this offending caused me to become involved with drugs and alcohol and then offending against the law which may not have happened if these offences never occurred.
>
> In relation to relationships I have trouble with intimacy and trusting people and has affected my long term relationships. I don't believe that I have had a "normal" relationship.
>
> I still have nightmares about him, most recently last night, so I feel that the offending has affected me psychologically. I have seen psychologists (clinical). I have been diagnosed with PTSD and a major depressive disorder and GADD (Generalised anxiety disorder). I have had depression on and off.
>
> This has affected me from holding down a job properly so every aspect of my life feels affected.
>
> Since reporting this to the police I have been unemployed and struggling psychologically everyday. There are times when I spend up to 5 days without ever leaving the house.
>
> I have trouble in public places or around strangers unless I am heavily medicated (anti depressants & anti anxiety medication)."

[19] No medical evidence with respect to the complainant's current state of mental or physical health was given at the sentence hearing or during the trial.

[20] The complainant had a troubled childhood. This emerged during the course of cross-examination of him.[5] His parents separated about four years prior to the offending. The separation had been preceded by abusive conduct towards the complainant's mother by his father. The complainant had had difficulty coping with that and was referred for psychiatric assistance. His father was a very strict man. At the time of the offending, the complainant was living with him. He was "emotionally distant" from the complainant. The complainant was reluctant to talk to his father about the applicant's treatment of him for fear of being "classed as a homosexual".

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3 AB 57; Tr1-51 LL4-7.
4 AB 113 – 114, Exhibit 4.
5 AB 53-56.

The applicant's personal circumstances and antecedents

[21] The applicant was 26 and then 27 years old at the time of the offending. He was 44 years old at the time of sentence. He was educated to tertiary level having obtained the degree of Bachelor of Applied Science in Built Environment, Architecture and Industrial Design and a graduate Diploma in Secondary teaching.

[22] From January 1991 to August 1998 he worked at the secondary school which the complainant attended. Contemporaneously with that, he built a house renovation business which in due course became insolvent. In 1998 he left Australia and lived in the United Kingdom until the end of 2010 when he returned and began to reside in a rural town in Western Australia. He was employed there as a secondary school teacher from January 2011 until his arrest in March 2012. He set up, with his employer's approval, a renovation and repair business and also established a monthly community market for which he received an Australia Day award from the local council.

[23] The applicant was extradited to Queensland by consent. Here, while he was on bail, he obtained employment as a catering supervisor and worked at weekends. As well, he set up and furnished a coffee shop which he was forced to close once he was sentenced to imprisonment.

[24] The applicant had no prior criminal history.

The sentencing remarks

[25] The learned judge observed that the applicant had the obvious capacity to be a useful member of the community notwithstanding his "most serious offending": it occurred over a substantial period; it involved grooming that demonstrated "careful planning"; and it was of a "predatory nature". It involved an abuse of the position of trust which the applicant occupied and was of "a clandestine nature".

[26] Although there was a hand-up committal without cross-examination of witnesses, the complainant was cross-examined at trial. Leave was sought and given to cross-examine on several offences for which the complainant had been convicted in 2005 with a view to impairing the complainant's credit. The learned judge observed, quite fairly, that the applicant "demonstrated no remorse". He noted that neither violence nor threats were involved in the applicant's offending and that the age difference was not as great as in many of the cases of this kind.

[27] The learned judge then spoke of the "very substantial" effect on the complainant of the offending as detailed in the victim impact statement. He commented:

> "[It] details the way in which your victim's ability to form relationships and to trust people has been affected. It is not difficult to accept that he has lasting, distressing memories of the events and that those matters have troubled him more since he reported the matter to the police. The evidence that I heard concerning the way in which the matter was reported to police and his initial inability to confront the issues and talk to police about them gives much weight to what is contained in the victim impact statement."[6]

[28] His Honour then referred to the varying seriousness of the offences of which the applicant had been convicted. The following observations played a central role in the sentencing:

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6 AB 103 L48 – AB104 L8.

> "It seems to me that this is a special case because of the very serious effect the offending has had on your victim. I accept that he was a bright student, and likely to finish school doing well in all of the subjects that he was pursuing.
>
> The offending that you perpetrated on him led to his leaving school early, and in that way alone, changed his whole life, because he didn't attain the level of education that he might have otherwise attained.
>
> He has continued to be troubled by the effects of your offending at various levels, and particularly recently, has been unemployed for a significant period, having reported this offence finally to the police."[7]

[29] Turning to the sentence for the maintaining offence, the learned judge first said:

> "It is my view that the sentence for the maintaining offence should be one that marks the seriousness of the offending, that deters you, and deters others who might be like-minded in our community to commit this sort of offending, from doing so."[8]

[30] Then he fixed the sentence for that offence as follows:

> "It is suggested to me that an appropriate range is one of two to four years. I have considered all of the cases, and particularly in light of the victim impact statement, I am unable to accept that submission, and because moderation is urged on me by the Crown, I will not sentence you at the level that first appeared appropriate to me, which might have been a sentence of six years' imprisonment, but it seems to me that the lowest sentence I can impose upon you which marks the seriousness of your offending and the community's revulsion for it, is one of five years' imprisonment and I sentence you to five years' imprisonment in respect of count 1 on the indictment.
>
> As I've said, the conduct of the trial did not demonstrate anything remotely approaching remorse, and it seems to me to be appropriate that your reintegration into the community should be something that will be controlled by the Parole Board in due course."[9]

[31] The sentencing remarks were made after submissions on sentence by both the prosecutor and defence counsel in which comparative cases were referred to and appropriate sentence ranges were suggested. Reference will be made to those submissions in the course of the discussion of the grounds of appeal.

[32] I now turn to the grounds of appeal. It is convenient to consider Ground 2 first.

Ground 2 – sentencing on the basis of "a special case"

[33] In the course of argument of the application, this ground was clarified as one of a complaint that the learned judge had treated the victim impact statement as akin to

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7 AB 104 L21-48.
8 AB 105 LL15-22.
9 AB 106 LL12-48.

expert evidence that the offending conduct was the sole cause of the totality of the impacts recorded in it by the complainant, notwithstanding the evidence of the complainant's troubled childhood. The complaint focused upon the complainant's assertion that he had been diagnosed with PTSD, a major depressive disorder and GADD, all of which he attributed to the offending conduct and upon the fact that no medical evidence had been called to verify either these diagnoses or the cause or causes of the diagnosed conditions.

[34] This complaint needs to be viewed in the context of submissions made about the victim impact statement at the sentence hearing. His Honour said with respect to that document as a whole:

> "Yes, and I'm aware that the cases say that one should approach such documents with caution where there are not - where there is not medical evidence put forward, but I had the advantage of seeing the complainant in the witness box and that assists me to, I think, determine the weight that I ought give to that."[10]

[35] It would appear that his Honour had in mind the observations of Fryberg J in *R v Singh*[11] to the effect that lay diagnoses of medical and psychiatric conditions stated in victim impact statements should not be acted on and the prosecution should call the appropriate supporting evidence. After reference was made to *Singh* at the hearing, his Honour further observed:

> "Yes, but we know something of the difficulties, don't we, because we had the advantage of hearing from Miss Gibson [the complainant's ex-partner], as well as from the complainant, about the way the relationship progressed."[12]

[36] My impression from reading the sentencing remarks as a whole is that his Honour had regard to what the complainant said in his victim impact statement about the significant and varied effects that the offending had had on his life. He assessed what the complainant said in the statement in light of his testimony and also that of his ex-partner. That evidence amply justified findings that the offending had caused the complainant to suffer anxiety, depressive bouts and serious relationship difficulties, and that it had curtailed his educational opportunities and consequently limited his employment opportunities.

[37] However, I do not understand his Honour to have made specific findings that the complainant had, in fact, suffered from the particular medical conditions mentioned by him or that if he had suffered from them, that the sole cause of them was the applicant's offending. Thus, I am not persuaded that the learned judge proceeded in a way that contradicted the approach approved by this Court in *Singh*. I am not satisfied that this ground of appeal has been established.

Ground 1 – manifestly excessive sentence

[38] As it evident from the sentencing remarks, the learned judge initially considered that an appropriate sentence was six years imprisonment, but having regard to

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10 AB 99; Tr3-15 LL22-27.

11 [2006] QCA 71 at p 7, McMurdo P and Williams JA concurring.

12 AB 101; Tr3-17 LL38-41.

a request for moderation on the part of the prosecutor, he imposed the "lowest sentence" he considered open to him of five years. The sentencing remarks also referred to the submission that had been made that the appropriate range was two to four years imprisonment. In fact, that submission was made by the prosecutor[13] after he had detailed some seven sentences imposed between 1994 and 2005 which, he submitted, were comparable. The prosecutor also submitted that in view of the lack of remorse, breach of trust, the repetitiveness of the conduct and its clandestine nature, and the impacts on the complainant, the sentence imposed should be not less than three years imprisonment.[14] The applicant's counsel submitted that the appropriate period of imprisonment was three years.[15]

[39] A number of decisions of this Court were referred to in submissions made on behalf of the applicant. They were ones that had been referred to by the prosecutor below.

[40] Several of these cases concerned father-daughter offending. In none of them was there evidence of continuing adverse consequences for the daughter. In *R v C*,[16] the offender was convicted after a trial of maintaining a sexual relationship with his daughter from when she was nine years old until she was 13. He masturbated in her presence, kissed her in the vaginal region and had her kiss his penis. He also exposed her to pornographic videos. His application for leave to appeal against a sentence of three years imprisonment was refused. A like outcome against a sentence of the same duration ensued in *R v L*[17] where the offender had maintained a sexual relationship with his nine and then ten year old daughter over a period of 18 months. His conduct involved simulated intercourse ending in ejaculation followed by a shared shower and further indecency. He was convicted after a trial. In *R v L*,[18] the offending occurred over a nine month period and involved a 15 year old daughter. The offender admitted to having maintained the relationship and also admitted to incest. The daughter would masturbate the offender to ejaculation. When she was in the bath, he would fondle her breasts and attempt digital penetration. He also encouraged her to fellate him in her bedroom. He was sentenced to four years imprisonment with parole after 15 months. His application for leave to appeal against sentence was refused. The offender's admissions and contrition modified a sentence which might otherwise have been higher on account of the incest conviction.

[41] Reference was also made by the applicant's counsel to cases beyond the father-daughter relationship. Of those, perhaps the most comparable to the present are the circumstances in *R v Goodman*.[19] There, the offender aged 43 years was convicted after a trial of maintaining a sexual relationship with a boy aged 15 years who was under his care. The offending conduct involved showing the boy pornographic videos and plying him with alcohol. The boy was masturbated and fellatio was performed on him. Threats were made to him. The boy suffered a psychiatric reaction to the offending. The offender was initially sentenced to three years imprisonment suspended after one month. An Attorney-General's appeal succeeded and he was re-sentenced to three years imprisonment with parole after 12 months.

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13 AB 92; Tr3-8 LL48-49.
14 AB 92; Tr3-8 LL49-57.
15 AB 94; Tr3-10 LL35-36.
16 [1994] QCA 318.
17 [1996] QCA 316.
18 [2002] QCA 268.
19 [1996] QCA 415.

[42] The applicant also referred to *R v Morgan; ex-parte Attorney-General*.[20] There, the 39 year old offender lived in the same unit complex as a 13 and then 14 year old girl with whom he had consensual sexual intercourse two to three times a week over a period of 10 months. She had a learning difficulty. He did not know about it. There were no continuing adverse consequences for her. On his plea of guilty, he was sentenced to three years imprisonment wholly suspended. On appeal by the Attorney-General, the suspension was varied to parole after 12 months. The applicant's reference to this case was as much in support of a suspension of his sentence after a fixed period so that he could return to Western Australia.

[43] For the purposes of this application, the respondent referred to several cases which had not been mentioned to the learned judge. The respondent proposed that these cases supported a range of four to five years imprisonment for the applicant's offending.

[44] In *R v M*,[21] a sentence of nine years imprisonment was reduced to six years. The offender was a high school teacher attended by the 14 year old male student involved. There was a 30 year age gap between them. Their relationship lasted three months. It involved numerous consensual acts including sodomy of each other, mutual masturbation, oral sex, licking and swallowing of semen and sharing of pornographic material. A late plea of guilty to a maintaining charge was made after the boy had been cross-examined at a committal hearing. The circumstance of anal penetration exposed the offender to a liability to life imprisonment for the offence.

[45] In *R v May*,[22] the offender, a teacher, was 28 years old. The offending involved an 11 year old male pupil. The conduct was regular and various. It took place at school generally in the earlier part of the morning, behind locked doors in the classroom. The offending stopped short of sodomy although it was simulated with the offender moving his erect penis between the boy's buttocks without anal penetration. The boy was unwilling for that to occur. Many forms of deprivation were perpetrated by the offender. The boy was obviously adversely affected. The offender pleaded guilty and he was sentenced to six years imprisonment with eligibility for parole after two and a half years. On appeal, his sentence was regarded as towards the higher end, but not manifestly excessive.

[46] Reference was also made to *R v HAN*.[23] The offender maintained a relationship over three years with his daughter when she was aged between 13 and 17 years. He procured her to masturbate him and to perform fellatio on him almost daily, compelling her to swallow his ejaculate. She was told by him not to tell anyone. Some of the offending occurred after the enactment in 2003 of amendments to s 229B of the *Code* which increased the maximum penalty to life imprisonment. The offender's sentence of seven years for the maintaining offence was reduced to six years.

Discussion

[47] In my view, the cases relied on by the respondent are not truly comparable. Two of them concerned offending for which the maximum sentence was life imprisonment.

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20 [1996] QCA 397.
21 [1994] QCA 047.
22 [1999] QCA 127.
23 [2008] QCA 106.

The other involved egregious conduct on the part of a teacher on school premises. The conduct included simulated sodomy of the male student just short of anal penetration.

[48] I regard the cases referred to by the applicant, and which had been relied upon by the prosecutor at sentence, as supporting a prevailing range at the time when this offending occurred, of two to four years imprisonment. This is a range applicable to offending where, as here, the victim's participation is not secured by force, the sexual acts involved are not penetrative and do not simulate penetrative acts, and the victim is not enticed into carrying out sexual acts on the offender.

[49] The applicant's sentence of five years is beyond that range. The conclusion I draw is that it is therefore manifestly excessive. I would not regard the sentence in *Goodman* as a firm guide for this case. Although the offending there was comparable, and arguably worse in some respects, no drugs were involved. Also, the moderation that is customarily applied on a successful Attorney-General's appeal against sentence needs to be borne in mind.

[50] I consider that there are circumstances of the applicant's offending which warrant a sentence at the higher end of the indicative range. They are the position of trust and authority occupied by him, his provision of drugs to the complainant, his evident lack of remorse and, significantly, the substantial impacts that the offending has had on the complainant. I would substitute a sentence of four years imprisonment. The circumstances do not at all warrant a suspension of the sentence.

Orders

[51] I would propose the following orders:

1. Grant leave to appeal against sentence.
2. Allow the appeal against sentence.
3. Substitute for the sentence imposed on Count 1 on the indictment, a sentence of four years imprisonment.
4. Otherwise dismiss the application.

[52] **PHILIPPIDES J:** I agree with the orders proposed by Gotterson JA and his reasons for judgment.