SUPREME COURT OF QUEENSLAND

CITATION:	*R v WBB* [2015] QCA 152
PARTIES:	**R** **v** **WBB** (applicant/appellant)
FILE NO/S:	CA No 274 of 2014 DC No 280 of 2013
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	District Court at Townsville
DELIVERED ON:	21 August 2015
DELIVERED AT:	Brisbane
HEARING DATE:	29 May 2015
JUDGES:	Gotterson and Philippides JJA and Martin J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Appeal against conviction dismissed.** **2. Application for leave to appeal against sentence refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where a jury convicted the appellant of four counts of indecent treatment of a boy under fourteen – where the boy was the appellant's son – where each count was particularised – where the complainant gave evidence in relation to each count – where the conduct was alleged to have occurred in late 1977/early 1978 – where there were a number of matters which the complainant could not recall – where the appellant gave evidence denying the offences – where much of the appellant's evidence was not challenged in cross-examination – whether the jury's verdict was unreasonable in light of the evidence CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant was sentenced to 18 months imprisonment – where the sentencing judge did not fix a parole eligibility date – where the sentencing judge took into account

matters raised in mitigation by reducing the head sentence – whether the sentence was manifestly excessive

Criminal Code (Qld), s 668E
Penalties and Sentences Act 1992 (Qld), s 160D(3)

Longman v The Queen (1989) 168 CLR 79; [1989] HCA 60, cited
M v The Queen (1994) 181 CLR 487; [1994] HCA 63, cited
MFA v The Queen (2002) 213 CLR 606; [2002] HCA 53, cited
R v Goulding [1994] QCA 276, considered
R v Jones [2003] QCA 450, considered
R v PAH [2008] QCA 265, followed
R v Wruck [2014] QCA 39, considered
SKA v The Queen (2011) 243 CLR 400; [2011] HCA 13, followed

COUNSEL: P J Davis QC, with H A Walters, for the appellant/applicant
B J Merrin for the respondent

SOLICITORS: Ruddy Tomlins & Baxter for the appellant/applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **GOTTERSON JA:** I agree with the orders proposed by Martin J and with his Honour's reasons for them.

[2] **PHILIPPIDES JA:** I agree with the reasons of Martin J and the orders proposed.

[3] **MARTIN J:** The appellant was convicted at trial of four counts of indecent treatment of a boy under the age of 14 years. The boy was his son. He was sentenced to 18 months imprisonment.

[4] This is an appeal against that conviction and an application for leave to appeal against sentence.

Ground of appeal against conviction

[5] At the hearing of the appeal the appellant was given leave to amend his notice of appeal so that the ground of appeal became: "The verdicts of the jury were unreasonable or cannot be supported having regard to the evidence."

The relevant legal principles

[6] The task facing an appellate court on an appeal of this type has been the subject of consideration by the High Court of Australia in *M v The Queen*,[1] *MFA v The Queen*[2] and, more recently, *SKA v The Queen*.[3] In *SKA*, the Court held that the task of an intermediate appellate court was correctly stated in *M v The Queen* and *MFA v The Queen*. The principles articulated in those cases were synthesised in the reasons of Mackenzie AJA in *R v PAH*[4] where his Honour said:

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1 (1994) 181 CLR 487.
2 (2002) 213 CLR 606.
3 (2011) 243 CLR 400.
4 [2008] QCA 265.

> "[29] … **The question which the court must ask itself is whether it thinks that upon the whole of the evidence, it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty**. In most cases, a doubt experienced by an appellate court will be a doubt the jury ought also to have experienced. **Where a jury's advantage in seeing and hearing the evidence is capable of resolving the doubt experienced by the appellate court, the court may conclude that no miscarriage of justice occurred.** Where the evidence lacks credibility for reasons which are not explicable by the manner in which the evidence was given, the reasonable doubt experienced by the court is a doubt which a reasonable jury ought to have experienced.
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> [30] **If the evidence, on the record itself, contains discrepancies, inadequacies, is tainted, or otherwise lacks probative force in such a way to lead the court to conclude that, even allowing for the advantage enjoyed by the jury, there is a significant possibility that an innocent person has been convicted, the court is bound to act and set aside a verdict based on that evidence**. In doing so, the court is not substituting trial by the Court of Appeal for trial by jury, for the ultimate question must always be whether the court thinks that, on the whole of the evidence, it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty.
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> [31] In *MFA v R*, it is reiterated that, given the jury's role, sometimes described as a constitutional role, as the tribunal for deciding contested facts, setting aside a jury's verdict, is, on any view, a serious step. **But where a doubt is experienced by an appellate court, it is only where the jury's advantage of seeing and hearing the evidence can explain the difference in conclusions about the accused's guilt that the appellate court may decide that no miscarriage of justice has occurred**. The function of s 668E of the *Criminal Code* and like provisions is to afford a mechanism against a prospect that an innocent person has been wrongly convicted upon unreasonable and unsupportable evidence and has therefore suffered a miscarriage of justice, while operating in a legal system that accords special respect and legitimacy to jury verdicts deciding contested factual issues concerning the guilt of an accused in serious criminal trials." (emphasis added)

[7] The ground of appeal against conviction in this case is drawn from s 668E of the *Criminal Code* 1899. It provides a ground which is equivalent to the former terminology of "unsafe or unsatisfactory" which was considered in *M v The Queen* and *MFA v The Queen*.

The evidence

[8] The complainant is one of the appellant's sons. He gave evidence of four separate incidents which occurred during the three month period from December 1977 to February 1978.

[9] In early December 1977 the appellant and his wife (the complainant's mother) separated. Before the separation, the family had been living at "W", a cattle station some 15 kilometres from Bowen. Upon the separation, the mother, the complainant and his brother and sister moved to Bowen.

[10] The complainant gave evidence that he would visit his father at "W" on weekends and would stay overnight. Three of the events took place, he said, on those visits. The fourth, he said, occurred at another station, "A", which was a cattle station owned by the appellant's brother and situated just north of Bowen.

[11] Each count was particularised. Those particulars, and the evidence called in support of them from the complainant, were as follows.

[12] **Count 1**: "The accused placed the complainant's hand on the accused's penis. This occurred at W Station."

The complainant gave the following evidence:

> Okay. And can you recall some things that Mr WBB did to you at W?---Yes.
>
> And what's the first thing that you can recall?---We were in a – it was night time in the bedroom and he grabbed my hand – we were lying in bed and he grabbed my hand and put it on his – on his penis and he started rubbing his hand with my hand up and down his penis.
>
> You said the bedroom. Can you recall what bedroom it was?---The main bedroom. The main family bedroom. The main – where – where himself and my mother used to sleep when we were children.
>
> Okay. And there was a double bed in that room?---Yes.
>
> And you were both on that bed?---Yes.
>
> Can you recall what he was wearing?---I think – I think he was wearing – yeah. I can't recall what it was, but I think he was wearing clothes.
>
> Can you recall whether his penis was exposed or otherwise?---His penis was exposed.
>
> Okay. So it was skin on skin; is that correct?---Yes.
>
> Can you recall what you were wearing?---I was wearing pyjamas, from memory.
>
> And how long did that action go for?---I'm not sure of exact timeframes as far as – a minute or two, maybe.
>
> And how did you – well, can you recall what his penis looked like?---Well, his penis was erect.
>
> Thank you?---And he was circumcised.
>
> Did it – how did that particular action come to stop?---Well, I took – once he – once I stopped rubbing his penis up and down, he masturbated and – yeah, his body was jerking on the bed and he was – he was ejaculating on the bed or – he was ejaculating and his body was jerking.

> Can you recall what you were doing when that was happening?---Just laying in the bed watching.
>
> All right. On that particular occasion, can you recall when it occurred?---It was at night time.
>
> Okay. Do you remember the date?---I can remember it was in the first couple of months – either late in – like, in December of '77 or first couple of months in '78.
>
> Okay. And is there a reason that you remember those dates in particular?---I just remember it happened not long after my mum and ourselves left the property and I went back out there to stay by myself. I just know it was in that timeframe. I remember - - -
>
> And on the night of this particular incident, can you recall whether there was anybody else in the house?---No. Not to my recollection, no.
>
> Okay. Can you recall there was no one present or can you just simply not recall whether there was anybody?---There was no one else in the house."[5]

[13] **Count 2:** "The accused pushed the complainant's head down to his penis. The complainant's lips and/or mouth touched the accused's penis. It occurred at W Station."

The complainant gave the following evidence:

> "Okay. Thank you. Now, what's the next thing that you can remember happening?---We were in the bed again one night and we were facing each other and he put – he pushed my head down to his penis and told me to bite him, bite him, and he was ejaculating. And I didn't know what it was. I felt confused and I pulled away.
>
> Did you touch his penis at all?---Not from my recollection – yes. Well, yeah. Not with my hands; with my lips.
>
> Okay. And you said you were confused about what had happened. What were you confused about?---I didn't – remember thinking what is this stuff?
>
> Can you recall what you were wearing on this occasion?---I think I was wearing my pyjamas.
>
> And can you recall when – the date of this occurring?---Just the timeframe. Just, like I said, in the last month of '77 or the first couple of months of '78 because it was in that timeframe that I used to go out there. I can remember.
>
> And – I'll go back. How did your head come to be near his penis or on his penis?---He pushed the back of my head down.
>
> Was that using a hand?---Yes.
>
> And, again, can you recall whether there was anybody in the home other than yourself and Mr WBB that evening?---There was no one else there."[6]

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5 T 1-7 l 9 – l-8 l 19.

6 T 1-8 ll 21-46.

[14] **Count 3**: "The accused placed his mouth on the complainant's penis. This occurred at W Station."

The complainant gave the following evidence:

> "If I can move to the next thing that you can recall occurring?---Another night, we were in the bed. He pulled my pants – pulled my pants down and used his fingers on my penis.
>
> You said he used his fingers?---His – masturbated my penis with his fingers. My penis got erect. And then he put his – went down and put his lips over – and sucked on my penis.
>
> Can you tell me how long that particular action - - -?---Just a couple of seconds.Two or three. I – yeah. A few seconds. Two or three seconds.
>
> Okay. And how did that come to stop?---I pulled away because I felt confused. I didn't know what was going on.
>
> And, again, can you recall whether anybody was home on this particular evening?---No, there was no one there.
>
> And, again, do you recall the date?---Just in the first – in the last month of – in the last month of '77 or the first couple of months of '78.[7]

[15] **Count 4:** "The accused touched the complainant's penis. This occurred at A Station."

The complainant gave the following evidence:

> "Can you recall another occasion that he touched you?---Yeah. We were at a station in G which his brother, my uncle, used to own.
>
> …
>
> Now, where were you sleeping that night?---We were – we slept in a bedroom upstairs and - - -
>
> And were there other people home - - -?---Yes. Yes.
>
> - - - on this evening?---Yes. I can't remember who, but there was a – I can – other people were there that we were visiting – we were visiting at the property.
>
> Now, can you tell the court what happened to you that night?---He used – he used his hand to masturbate my penis – pull on my penis.
>
> Do you recall whether the door was open or closed?---I can't recall.
>
> Do you recall how that – how long that went for?---No, I can't recall exactly how long. No."[8]

[16] Evidence was also called from the complainant's mother. She recalled an event in October or November 1978 when she had an argument with the appellant. Three other people were present including WJ who was to become her second husband.

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7 T 1-9 ll 1-19.

8 T 1-9 l 19 – 1-10 l 7.

Mr WJ hugged and kissed the complainant's mother and the complainant said, in reference to the appellant: "He's been doing it to me too". This had the result of the room falling silent. The complainant was taken by his mother into another room where he told her that "He touched me" and "He molested me".

[17] The complainant's mother also gave evidence that a month or so later there was another conversation in which the complainant said "… his father had pulled his pyjama pants down, he had felt his - his father had felt his penis, and then he had pushed his head down on to his father's erect penis."[9] She said that the complainant told her that it had happened at W.

[18] The complainant's mother also gave evidence that some 30 years after the events in question, in 2007, the complainant said to her: "You know, mum, he did it to me at Ray's as well. Ray put us in the same room."[10] It was uncontroversial that the reference to "Ray's" is a reference to A Station.

[19] Other evidence was called from the complainant's wife who said that she had been told by the complainant that he had been molested by his father and that it had happened when he was about 10 years of age at W after his mother had left. Over the following years there were other, similar, conversations but little detail was given.

[20] The appellant gave evidence. He denied the offences and gave evidence about the circumstances relating to the time in question.

The Appellant's Submissions

[21] The case for the appellant was in four parts:

(a) The age of the conduct.

(b) The lack of particularity.

(c) The absence of a challenge to the appellant's evidence.

(d) The unlikelihood of the events in Count 4 having occurred.

The age of the conduct.

[22] The conduct was alleged to have occurred in late 1977/early 1978. The first complaint to the police was made in February 2012. While a *Longman*[11] direction was given[12], the appellant argues that the effect of delay was increased by other matters such as the lack of particulars around the claimed conduct apart from the acts themselves. The complainant could not recall many of the events surrounding the alleged incidents.

The lack of particularity

[23] The appellant points to a number of matters in the evidence of the complainant to support the argument that there is an absence of evidence on matters surrounding the charges and that the absence is of such a nature that it must reflect unfavourably on all the charges. There were matters which the complainant could not recall, including:

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9 T 2-28 ll 38-40.
10 T 2-29 ll 31-32.
11 *Longman v The Queen* (1989) 168 CLR 79.
12 The appellant made no complaint about the summing up.

- Whether, when he stayed at W, it was for more than one night at a time.
- Who was present when he made the complaint to his mother.
- He had no recollection of the events of New Year's Eve in 1977. That is a relevant issue because the evidence strongly suggested that that was the only time the appellant had been at A.
- He could not recall who was at A, or where they were sleeping, on the night in question.
- He was unable to say why he asserted that the offences occurred in the period of December 1977 to February 1978.
- He could not say whether the lights were on in the particular room at the relevant times.

No challenge to the appellant's evidence

[24] Much of the appellant's evidence was not challenged in cross-examination. Among other topics, his account of these matters was not contested: his contact with his son through the balance of 1978; the events of the New Year's Eve party in 1977; that sleeping arrangements for that night were dictated by someone else; his arrangements with his wife about access to his children; and that the complainant usually slept in his own room. Further, it was only after a debate (in the absence of the jury) about whether the prosecution had or should put its case to the appellant that he was recalled and this exchange occurred:

> "[Prosecutor]: … Mr WBB, you indicated in your evidence-in-chief that you'd never sexually or [sic] touched your child, D, in a sexual way. I'd suggest to you that you did. What do you say to that? --- I did not touch my son in a sexual way."[13]

The unlikelihood of the events in Count 4 having occurred

[25] The evidence tended to a conclusion that, if count 4 occurred, it occurred on New Year's Eve 1977. It was a major event in the lives of members of the family with many people attending. The complainant could not remember and was not able to give evidence about whether the offending occurred after the party held on that night. When he spoke to his mother in late 1978 he did not say anything about any offending at A. The appellant gave unchallenged evidence that there were many people in the house who slept over after the party. The high likelihood is that at the time, the only opportunity for the appellant to commit the offence in Count 4 would have been when there was a house full of people and others were in the same bedroom as the appellant and the complainant. Further, there was no complaint made by the complainant about anything occurring at A until 2007. Earlier complaints only referred to offending occurring at W.

The respondent's submissions

[26] The respondent made the following submissions in response to the four parts of the appellant's case.

The age of the offending

[27] The ordinary experience of life leads to an understanding that memories are not perfect. Allowance has to be made for the passing of time and the effect it has on the

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13 T 2-80 ll 27-29.

ability to recall peripheral or less important detail. Further, the young age of the complainant at the time of the offending and the circumstances of his parent's separation and its consequences to his life at the time are likely to have impacted on the events that the complainant now recalls. The fact that the complainant was not able to provide evidence of surrounding events is understandable and does not detract from the credibility of his complaints.

The lack of particularity

[28] The complainant was able to give evidence with respect to the circumstances of the offences which was more than a mere recitation of the charges. He spoke of the manner in which the appellant's body was "jerking on the bed" and "was ejaculating on the bed". He was able to describe in detail how the appellant pushed his head down to the appellant's penis and told him to bite it. He said "… I didn't know what it was. I felt confused and I pulled away". Other details of the offending relevant to this head of argument included: the disclosure to the complainant's mother at a time proximate to the offending; the detail he gave on that occasion, although provided reluctantly; the disclosure to one his best friends when they were young men; the timing, detail and fact of the disclosure to his future wife; the disclosure to his cousin; and the evidence he gave about his change of attitude with respect to working on the cattle property.

No challenge to the appellant's evidence

[29] The matters relied upon by the appellant as being unchallenged by the prosecution were of little relevance in determining whether the offences occurred as alleged. The trial was conducted in a way which made it clear that the issue for the jury was whether the complainant's evidence could be accepted beyond reasonable doubt. The case by the appellant at trial on this point concerned whether denials made by the appellant had been challenged. It was clear that the appellant's evidence was understood to be challenged by the prosecution's case.

The unlikelihood of the events in Count 4 having occurred

[30] It was not asserted that the complainant's account of the offences was inconsistent with his disclosures relating to the offences at W. If it is the absence of disclosure in relation to the offence at A that is said to count against the complainant, then the comments concerning his youth and the other circumstances existing at the time account for that. It is understandable that he did not give a full and detailed account to his mother. Although the complaints concerning A were made many years later, they were made before reporting the matter to police and are not inconsistent with the complainant's evidence. Common experience teaches that the full details of offending of this nature are often only revealed gradually.

Consideration

[31] The various matters relied upon by the appellant can be reduced to two broad issues. The first is the reliability of the appellant's evidence. This arises out of three of the areas raised by the appellant: the age of the complaint, the lack of particularity and, together with those matters, the late complaint about Count 4. The second is the absence of challenge to the appellant's evidence. While this relates to the whole of the evidence available for consideration, it raises a different issue and therefore I will deal with it separately.

[32] In cross-examination, the complainant was challenged about his memory and his incapacity to recall the surrounding or "peripheral" events. This absence of detail, both in the particulars and in the evidence, was said to tell against acceptance of the complainant's evidence. But against that must be weighed matters such as these:

(a) the complainant's youth at the time (he was 10);

(b) his ability to recall the details of the actual offending;

(c) his ability to describe his reaction to what occurred, such as: "I pulled away because I felt confused. I didn't know what was going on."[14]

(d) he could recall that, at A, only he and his father were in the bedroom on the night in question.

[33] There was also the evidence of the complainant's mother as to what he told her in 1978. This included his statements to her that his father had pulled the complainant's pyjama pants down, that his father had felt the complainant's penis and had pushed his head down onto his father's erect penis.

[34] It is reasonable to describe both the particulars of the charges and the complainant's evidence as lacking in some detail. But that detail is of the surrounding circumstances. The complainant was able to provide a telling account of each of the events the subject of the charges. So far as Count 4 is concerned, while he could not recall much of the party which had occurred, he did say that there were many people in the house and he was not shaken in his description of who was in the bedroom.

[35] No relevant inconsistency was revealed between what the complainant had said to others in the years following the events and in his own evidence. In that sense there were no discrepancies in his evidence. The appellant's argument is really that the prosecution case was inadequate. But that relies to a very large extent on what the appellant says is a lack of detail. That is, for the most part, answered by the acknowledgment that a 10 year old boy, whose life had been thrown into turmoil by the separation of his parents, might not be expected to remember anything but those events which had the greatest impact on him.

[36] Apart from the complainant's evidence there was the evidence from the complainant's mother and from his (then) intended wife. Nothing that they said was inconsistent with the complainant's evidence in any relevant degree.

[37] Each of the accounts given by the complainant was denied under oath by the appellant. He gave evidence of circumstances which would, if accepted, tend to weaken the prosecution case. These are matters which must be weighed as part of the whole of the evidence presented at trial.[15] Upon an examination of all of the evidence, any discrepancies or inadequacies emerge from the asserted lack of detail in the particulars and the evidence from the appellant. That asserted lack of detail is appropriately answered by reference to the factors set out above. The nature of the "unchallenged" evidence of the appellant needs now to be dealt with.

[38] I turn to the ground relating to the asserted failure to put the prosecution case to the appellant. This was argued on the basis that the failure to do so left large parts of the appellant's evidence unchallenged. This body of evidence is something which has to

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14 T 1-9 l 12.

15 *SKA v The Queen* (2011) 243 CLR 400.

be taken into account when considering the whole of the evidence. More importantly, the appellant's argument was that "much of Mr WBB's evidence just simply wasn't met by any evidence of the Crown".[16] But these matters were put to the complainant and were answered by him. In many cases he said he could not recall the particular matter – in others he denied them.

[39] It was clear at trial that the matters put to the complainant, and which constituted the appellant's evidence, were not accepted. There was, in that sense, a challenge. So much can be seen from the debate which took place at the conclusion of the appellant's evidence. The only matter which was of concern to the appellant's counsel was whether or not Mr WBB have ever sexually touched the complainant. That was put to the appellant following the argument on this point. There was no argument about putting the complainant's denials to the appellant. There would have been no point in doing so. There was no need for the prosecution to put to the appellant all the denials of the complainant.

[40] The ground of appeal against conviction is not made out.

Leave to appeal against sentence

[41] The applicant argues that the sentence imposed is infected by two errors:

(a) No period of actual custody was called for; and

(b) The failure to fix a parole eligibility date.

[42] In fixing the sentence the learned trial judge took into account the applicant's age (73), his good character, his health problems which would be exacerbated by imprisonment, and the contribution that he had made to the community throughout his life.

[43] The learned trial judge also, correctly, recognised that he was required to impose a sentence according to the sentencing levels which applied at the time of the offending, that is, 1977 and 1978. In doing that, the learned sentencing judge said that the appropriate level of imprisonment "would be no less than two years and likely somewhere between two and three years". In recognition of the factors referred to above, he imposed a sentence of 18 months. We were not referred to any comparable authority which would have supported a sentence in which no actual custody was to be served. But we were referred to authorities which do support the sentence imposed.

[44] In *R v Wruck*[17] Holmes JA examined a number of authorities concerning sentences for offences committed in similar circumstances. The offending in that case had occurred about 30 years before the conviction and involved similar sexual acts with a boy under 14 years of age. In that case the applicant was regarded as deserving of consideration for his immediate admission to having committed the offences which resulted in an early plea of guilty and obviated the need for the complainant to give evidence. A sentence of 18 months imprisonment to be suspended after four months was imposed. Holmes JA said that the seriousness of the offences did "call for denunciation and real punishment in the form of actual imprisonment, albeit for a short period".[18]

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16 Appellant's written submissions [27].
17 [2014] QCA 39.
18 *Ibid* at [37].

[45] In *R v Jones*[19] the applicant had been sentenced to four months imprisonment after being convicted of one count of sexual assault of a 16 year old school girl. The offence took place on a bus and the 70 year old applicant was the driver of the bus. The applicant was said to be in a position of trust, but there are varying degrees of trust, and it is difficult to conceive of a relationship in which the level of trust is higher than that between a parent and child.

[46] In *R v Goulding*[20] the applicant was convicted by a jury of one count of indecent treatment of a boy under 14 years and was sentenced to two years imprisonment with parole eligibility after six months. The incident had occurred approximately 10 years before conviction and consisted of touching and kissing the groin and thighs of the complainant before sucking his penis and rubbing his own penis on that of the 13 year old complainant. As with this applicant, Goulding had no criminal history. The sentence was not considered to be manifestly excessive but was not regarded as being "light".

[47] I agree with the submission made by the respondent that the breach of trust by a biological father of his young son at a time when the son was particularly vulnerable is deserving of denunciation and punishment. In this case, the number of offences and the circumstances in which they were committed were particularly important. No errors in the reasoning of the learned sentencing judge were demonstrated by the applicant and the sentence imposed was not, on the authorities, excessive.

[48] In the original application the applicant contended that the learned sentencing judge had erred in not fixing a parole release date pursuant to s 160D(3) of the *Penalties and Sentences Act* 1992. That section does not allow for a parole release date to be fixed. At the hearing of the appeal the applicant amended this contention to argue that either a parole eligibility date should have been fixed or the term of imprisonment should have been suspended after a period. The sentencing judge appropriately accounted for the matters raised in mitigation by reducing the head sentence. The fixing of a parole eligibility date for offences of this type is a matter for the discretion of a sentencing judge. No error has been demonstrated in the exercise of that discretion.

Orders

[49] I would dismiss the appeal against conviction and I would refuse the application for leave to appeal against sentence.

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19 [2003] QCA 450.
20 [1994] QCA 276.