COURT OF APPEAL [1992] QCA 082

FITZGERALD P
McPHERSON JA
THOMAS J

CA No 293 of 1991

THE QUEEN

v.

DOUGLAS JOHN WIELAND
Applicant

BRISBANE

... DATE 3/3/92

JUDGMENT



4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Tel:(07)2274360
Fax:(07)2275532

JUDGMENT

McPHERSON JA: Douglas John Wieland applies for leave to appeal against a sentence of imprisonment for a term of nine years imposed in respect of a single count of rape alleged to have been committed on 15 February 1991. He was tried in the District Court and found guilty be a jury.

The circumstances of the offence are that the complainant went to have her lunch in a public park in Nambour during her lunch break from work. She was confronted by the applicant whom she knew by sight but not in any sense as a close acquaintance. He was armed with a knife, held the knife close to her, threatened her with violence if not with death, forced her to remove part of her clothing, and raped her in circumstances which caused her considerable pain. She was 17 years old and a virgin, and there is medical evidence that attests to the force that was used to penetrate her.

The applicant was at the time, 20 years old. He was under probation that had been imposed for a period of two years in consequence of a series of offences of aggravated assaults on women which had been committed between 15 January 1990 and 8 May 1990. The assaults in question consisted of kissing or embracing some four different women whom he evidently accosted in public places in Nambour.



4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Tel:(07)2274360 Fax:(07)2275532

A further such offence was committed by him on 11 October 1990, at which time he was still under the sentence of probation imposed for the earlier offences in the Magistrates Court at Maroochydore on 27 July 1990. He was not dealt with in respect of the last of those aggravated assaults until some three days or so after the offence of rape, the subject of this application, had been committed. On that occasion, his probation was effectively increased by a further year and he was ordered to perform 240 hours of community service. That particular sentence pales into insignificance in the light of his subsequent offence of rape and the sentence imposed upon him in respect of it.

There was evidence before the learned sentencing Judge that the applicant had, for some time before the rape was committed, loitered around the place of the complainant's employment and had followed her to the park in question. It is apparent that the offence was carefully premeditated. There was also some evidence of earlier harassment of the complainant during the preceding six months. The applicant had, she said, previously exposed his person to her at her work and had previously attempted to kiss her against her will.

On the occasion in question, the circumstances of which I have briefly outlined, he approached her from behind with a knife



4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Tel:(07)2274360 Fax:(07)2275532

in his hand, he pressed the knife against her shoulder and then against her back as she attempted to flee, and as I have said, he threatened to kill her both before and after the offence was committed. Inevitably, she became fearful and her fears have remained with her since that time to such an extent that she has abandoned her employment.

The applicant was subjected to psychiatric examination by Dr Tom Bell, who gave a report which forms part of the record before us. It is the conclusion of that psychiatrist that Mr Wieland, the applicant, has significant personality problems, but was not, in the opinion of that expert, suffering from any psychiatric disorder.

We were referred by Mr Rafter, who appeared on behalf of the applicant, to the decision in The Queen v Brian Docherty CA No 176 of 1990 where a sentence of nine years' imprisonment was imposed and not disturbed on appeal by the Court of Criminal Appeal in respect of a similar offence of rape of a stranger in a public place. It may be added that, as Mr Rafter pointed out, in that case the sentence was effectively a longer sentence for the reason that the applicant in that instance had been in custody for some time before the sentence was imposed.

In the present case the applicant was evidently on bail at the



4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Tel:(07)2274360 Fax:(07)2275532

time of the trial and conviction, and his position therefore, is not in that particular sense worse that that of the applicant Docherty in the case I mentioned.

In all the circumstances, and having regard to the time, place, method used, and the victim of the offence, there is to my mind no proper basis on which this sentence could be upset. I would therefore refuse the application for leave to appeal.

THE PRESIDENT: Yes, I agree.

THOMAS J: I agree.

THE PRESIDENT: The application is refused.

---



4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Tel:(07)2274360 Fax:(07)2275532