

COURT OF APPEAL

de JERSEY CJ  
HELMAN J  
JONES J

CA No 123 of 2002

THE QUEEN

v.

G

(Applicant)

BRISBANE

..DATE 25/09/2002

ORDER AND JUDGMENT

THE CHIEF JUSTICE: The indictment is amended accordingly and that is the indictment which appears at page 1R of the record book. Counts 34 and 37 are amended to read "June" instead of July in each case.

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THE CHIEF JUSTICE: I will invite Mr Justice Helman to deliver the first judgment.

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HELMAN J: This is an application for leave to appeal against sentences imposed earlier this year in the District Court.

On 26 March 2002, the applicant was sentenced to imprisonment in the District Court at Beenleigh on each of eighty-one counts of serious sexual misconduct with children.

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There were three indictments before the Court. The first contained twelve counts of offences of indecent treatment of children, committed in October 1999. There were four complainants, all girls, one of whom was his own daughter. Two were aged eleven years, one twelve, and one thirteen. On 25 February 2002, the applicant pleaded not guilty to each of those counts and on 1 March, after a trial, he was found guilty on each. All of the girls were under his care when the offences were committed. His Honour sentenced the applicant to imprisonment for eighteen months on each of ten counts, and to imprisonment for three years on each of the remaining two counts.

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On 8 March 2002, the applicant pleaded guilty to all counts on a second indictment, alleging offences against two sisters: thirty-seven against the older sister, and eight against the younger. The offences against the older sister were committed from when she was ten years old to when she was about twelve years old. The younger sister was twelve when she was molested. Twenty-nine of the counts concerning the older sister, and all of those concerning the younger, were of indecent treatment and the applicant was sentenced to imprisonment for five years on each of those counts. There were seven counts of carnal knowledge of the older sister and one of maintaining a sexual relationship with her. In every case but one of indecent dealing with the older sister the complainant was under the applicant's care. For each offence of carnal knowledge, the applicant was sentenced to imprisonment for twelve years and for maintaining a sexual relationship with a child, he was sentenced to imprisonment for sixteen years.

There was a third indictment, containing twenty-one counts of indecent treatment of children and three counts of sexual assaults. The complainants were three boys, aged eight to fifteen years when the offences were committed. In all but six cases the complainants were under the applicant's care when the offences were committed. On 8 March 2002 the applicant pleaded guilty to each of those counts and was sentenced to imprisonment for five years on eleven of the counts and to imprisonment for six years on the remainder.

The applicant complains that the sentences imposed were manifestly excessive; and, as might have been expected, the focus of the argument on his behalf was upon the sentence of imprisonment for sixteen years. In sentencing the applicant, the learned sentencing judge said this:

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"The relevant features of the conduct as a whole appear to me to be these. Firstly, the offences involve a total of nine different complainants, six of whom are female and three of whom are male; two, the conduct occurred over a period span of five and a half years. The offences charged in indictment 1 were committed in October of 1999. Those offences concern four complainants aged between 11 years and 13 years. The offences in indictment number 2 involve two complainants.

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The offences relating to the first complainant occurred over a period from when she was nine years to when she was about 12 and a half years, from April 1994 to July 1997. The offences committed in relation to the second complainant for indictment number 2 were committed when she was 12 years of age between August 2000 and November 2000. The offences committed in relation to indictment 3 contain offences committed between October 1994 and March 2000 and involve three separate male complainants, the first of whom was aged eight and nine years for three offences and 11 or 12 years for the fourth offence concerning him. A second mentioned complainant was aged 14 and 15 years. Those offences were committed over a 15 month period from June 1997 to September 1998. The final complainant was aged 15 years of age. The offences concerning him were committed over a two month period in February and March of 2000.

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It is a circumstance of aggravation that some of the offences were actually committed while you were on bail for other re-offences. The conduct itself involved the commission of very serious offences. The offences include a charge of maintaining an unlawful sexual relationship with a child under 16 that was marked by offences of unlawful carnal knowledge of the child.

That is the offence that was continued over a period of about three years and three months. The sexual offences committed in indictment number 3 involved at times the use of force on the boys to enable you to either have oral sex with them or force them to have oral sex with you.

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Generally speaking, the children at the time of the offences were in your care and so involved a breach of

trust. Some of the children were the natural children of de facto partners that you had from time to time. The offences as a whole are marked by a lack of any human consideration for any of the complainant children. You used all of the children for your own sexual gratification. The offences are aggravated by the effect of your offences on the victims of the offences. You do have a conviction for a past sexual offence, although that was committed when you were 29, back in the late 1970s.

You have not displayed any remorse that I can see for having committed the offences. In relation to count 1, you went to trial. In relation to indictment number 1 you went to trial. In relation to indictments number 2 and 3, although you have ultimately pleaded guilty, I was told that full committals were held with cross-examination of the various complainants relating to those charges. Although your pleas of guilty may be recognised within the sentence, I do not equate the pleas as resulting from any feelings of remorse on your part."

His Honour went on to say:

"The case, as I understand it, is one in which a declaration that some of the offences be declared serious violent offences could be made. However, some of the offences, indeed, the bulk of them, occurred before that legislation came into effect. On balance, I agree with the Prosecutor that the better course is to settle on an appropriate overall sentence, taking into account all of the relevant circumstances of mitigation, including your pleas of guilty to indictments 2 and 3."

Those remarks set out the gravity of the offences which were the subject of the sentences - not only the gravity of the offences, but the number of offences, and the devastating effect that they have had upon the young complainants.

It is said on behalf of the applicant that the sentence of sixteen years' imprisonment should be reduced to somewhere in the range of imprisonment for twelve to fifteen years, and it is suggested that the lower end of that range is the appropriate one.

When the comparable cases to which we have been referred are considered, however, it can be noted that when offences of this type - particularly offences so numerous and so devastating in their effect on children - have been before the Courts on previous occasions, sentences of up to imprisonment for seventeen years have been imposed. It would seem then quite clear that the sentence imposed in this case for maintaining a sexual relationship was within the accepted range of a proper sentencing discretion, and bearing in mind the features emphasized by the learned sentencing judge, I am not persuaded that it has been demonstrated that the intervention of this Court is called for. I should therefore refuse the application.

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THE CHIEF JUSTICE: I agree.

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JONES J: I agree.

THE CHIEF JUSTICE: The application is refused.

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