SUPREME COURT OF QUEENSLAND

CITATION:	*R v TS* [2008] QCA 370
PARTIES:	**R** **v** **TS** (applicant)
FILE NO:	CA No 164 of 2008 DC No 98 of 2008
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Southport
DELIVERED ON:	28 November 2008
DELIVERED AT:	Brisbane
HEARING DATE:	26 September 2008
JUDGES:	Fraser JA, Mackenzie AJA and Daubney J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Leave to appeal against sentence is granted.** **2. The appeal is allowed in respect of each of the sentences imposed in the District Court at Southport.** **3. The sentences imposed are set aside and in lieu thereof the following sentences are substituted:** **Counts 1, 4, 7 and 9: 12 years imprisonment** **Counts 10 and 12: Eight years imprisonment** **Counts 2, 3, 5, 6, 8 and 11: Five years imprisonment** **The offences in Counts 1, 4, 7 and 9 are declared to be serious violent offences.** **It is declared that 958 days spent in custody from 8 October 2005 to 23 May 2008 both inclusive be taken into account as time already served under the sentences.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to maintaining a sexual relationship with his

daughter over a six year period – where the applicant also pleaded guilty to offences of rape, attempted rape, sodomy and indecent treatment – where the applicant was sentenced to 20 years imprisonment on the maintaining, sodomy and rape counts with parole eligibility after 14 years – whether the sentence was manifestly excessive

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – OTHER MATTERS – where there was information before the sentencing judge that further uncharged acts were committed by the applicant against the complainant in another jurisdiction – whether and what use could be made of such information in sentencing the applicant

Corrective Services Act 2006 (Qld), s 182(2)
Criminal Code 1899 (Qld), s 229B
Penalties and Sentences Act 1992 (Qld), Pt 9 Div 3

R v AP [2003] QCA 445, cited
R v BAY [2005] QCA 427, cited
R v C; ex parte A-G (Qld) [2003] QCA 134, considered
R v D [1996] 1 Qd R 363; [1995] QCA 329, considered
R v DAF [2004] QCA 368, cited
R v G [2002] QCA 381, cited
R v GQ [2005] QCA 53, cited
R v Griinke [1992] 1 Qd R 196, cited
R v H [2001] QCA 167, distinguished
R v HAA [2006] QCA 55, cited
R v HAP [2008] QCA 137, cited
R v H, ML (2006) 96 SASR 139; [2006] SASC 357, cited
R v Jensen and A-G [1996] QCA 182, cited
R v Josifoski [1997] 2 VR 68, cited
R v K (1993) 69 A Crim R 236, cited
R v K, unreported, Court of Criminal Appeal, Qld, CA No 13 of 1991, 28 March 1991, considered
R v Kitson [2008] QCA 86, cited
R v KP; ex parte Attorney-General (*Qld*) [2006] QCA 301, cited
R v McDougall and Collas [2007] 2 Qd R 87; [2006] QCA 365, cited
R v PAD [2006] QCA 398, cited
R v S [1993] QCA 367, cited
R v RAC [2008] QCA 185, cited
R v Robinson [2007] QCA 99, distinguished
R v SAG [2004] QCA 286, considered,
R v Simons [1953] 2 All ER 599, cited
R v Warn (1937) 26 Cr App R 115, cited

COUNSEL: T A Ryan for the applicant
A W Moynihan SC for the respondent

SOLICITORS: Legal Aid Queensland for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **FRASER JA:** I have had the advantage of reading in draft the reasons for judgment of Mackenzie AJA, in which his Honour sets out the material factual and statutory background and analyses the authorities. I agree with his Honour's reasons and proposed orders, but because of the significance attributed in the respondent's submissions to *R v Robinson* [2007] QCA 99 and because that decision is frequently cited in applications of this kind I propose also to give my own reasons for concluding that the sentence imposed in the District Court is not supported by that decision.

[2] In *R v Robinson*, this Court set aside sentences of life imprisonment in respect of one count of maintaining a sexual relationship with a child under 16 years of age and two counts of rape, and substituted concurrent sentences of 18 years imprisonment in respect of those offences. As Mackenzie AJA's reasons demonstrate, it is apparent that the sentencing judge relied upon *R v Robinson* for his Honour's conclusion that the appropriate range of sentences here comprehended a sentence as severe as 20 years imprisonment. That sentence necessarily involved a minimum custodial period of 15 years.[1] The applicant's offences are undoubtedly serious and deserving of strong condemnation, but no other decision cited to this Court could be regarded as supporting a sentence approaching that crushing severity. Nor does *R v Robinson* justify it.

[3] Robinson was aged between 51 and 53 at the time of his offences. He was a friend of the parents of the complainant girl, who was between five and seven years old during the period of the maintaining offence. Robinson inflicted upon that very young but fully aware complainant systematic, prolonged and callous sexual abuse, including many instances of penile penetration over many months, with a devastating impact both upon the young girl and upon her family. Keane JA, with whose reasons Williams and Muir JJA agreed, described those facts as "serious aggravating features of this case." His Honour observed (in paragraph [36] of his reasons) that Robinson had "cunningly won the trust of the complainant's parents and then persistently and callously abused the complainant".

[4] The very high degree of that offender's callous manipulation and persistence in his offending against the complainant's wishes, and the pain and distress he caused that complainant over the lengthy period of serious sexual abuse, was graphically revealed by an audio recording which was covertly made by police when searching for evidence of a different offence. That significant matter is not detailed in *R v Robinson* itself, but it is described in *R v RAC* [2008] QCA 185 in the judgment of McMurdo P at [30]. Furthermore, as McMurdo P pointed out in paragraph [31] of her Honour's reasons, the judge who sentenced Robinson found that he had "groomed" the young girl and accustomed her to sexual contact and that the offences "were of the gravest type of such offending…us[ing] such force as was necessary to achieve [his] purpose and … certainly so far as the last instance is concerned over fairly significant resistance on the part of the complainant."

[1] *Corrective Services Act* 2006 (Qld), s 182(2).

[5] It was in that context that Keane JA observed in *Robinson*, at paragraph [40], that the authorities supported a sentence of imprisonment in a case of that kind of offending where the offender had the benefit of a plea of guilty, of "up to" 18 years.

[6] I would in this case adopt the observation of McMurdo P in *R v RAC* at paragraph [30] that *Robinson* turned very much on its own facts and circumstances.

[7] The sentence imposed in the District Court was manifestly excessive even giving full weight to the fact that the applicant's offending was shocking and deserves condign punishment. For the detailed reasons given by Mackenzie AJA and the additional reasons I have given, I have concluded that for the applicant's most serious offences a sentence of 12 years imprisonment (with the necessary serious violent offence declaration and the concomitant minimum custodial period of 80 per cent of that term) should be imposed. That is an appropriately severe sentence, it properly reflects the high degree of criminality in the applicant's offending, and it is in accordance with the range suggested by the decisions of this Court which are analysed by Mackenzie AJA.

[8] **MACKENZIE AJA:** The applicant pleaded guilty to maintaining an unlawful sexual relationship with a child, with a variety of circumstances of aggravation including that she was his lineal descendant, that she was under 12, and that he raped, attempted to rape and indecently dealt with her in the course of the relationship. The offence was committed over a six year period during the years 1995 to 2000. He also pleaded guilty to four offences of indecent treatment of a child under 12 who was his lineal descendent, two offences of indecent treatment of a child under 16 who was his lineal descendent, one of sodomy of a child under 12 who was his lineal descendent, two of rape and two of attempted rape. The child involved was his natural daughter.

[9] There was also information placed before the learned sentencing judge that the applicant had, on 10 December 2004, been sentenced to three years imprisonment suspended after 10 months for an offence of rape. He had rubbed his penis on the vagina of an eight year old girl and then briefly inserted his finger in her vagina. She was the daughter of a friend of his who lived nearby. As the offence post-dated the offences with which the application was concerned by several years, it could not affect the level of sentence. Its only relevance seems to be that hearing about it was said to be what prompted the complainant to reveal the offending she had endured. Also, for that reason, the sentencing was conducted on the basis that the offence was "an isolated incident of misconduct".

[10] The applicant was sentenced to 20 years imprisonment for the counts of maintaining an unlawful sexual relationship, sodomy and rape, 14 years imprisonment for the attempted rapes and the last two offences of indecent treatment of a girl under 16, and 10 years imprisonment for the counts of indecent treatment of a girl under 12. The learned sentencing judge fixed a parole eligibility date of 23 May 2022, 14 years from the date of sentence. Before sentence, the applicant had already served 958 days on remand for the present offences, from 8 October 2005 to 23 May 2008, almost two years eight months. The learned sentencing judge did not make any declaration that this was time to be taken as time already served, although it was recorded on the court order sheet. It was submitted that a formal declaration ought to be made by this court.

[11] The applicant has applied for leave to appeal on the ground that the sentence is manifestly excessive. In addition to that general ground, it was submitted for the applicant:

1. that the learned sentencing judge had failed to adequately take into account the applicant's pleas of guilty,

2. that he had erred in imposing maximum penalties for most of the offences and failed to differentiate between the various levels of offending,

3. that he had punished the applicant twice by imposing sentences other than conviction without further punishment for counts 2 to 12 which were incidents in the offence of maintaining an unlawful sexual relationship;

4. and that he erred in fixing a parole eligibility date at a time earlier than that permitted by legislation.

[12] Counsel for the applicant submitted to this court that a sentence of 20 years was manifestly excessive and that a sentence of 12 years was appropriate. For offences with similar features, a sentence within the range of 12 to 15 years was demonstrated by the cases. Involvement of very young children is treated as a factor of added seriousness. He submitted that, in the present case, the child was not in that category, being almost 10 when the period of offending in Queensland alleged in the indictment began. On the other hand, the Director of Prosecutions, while accepting that the parole eligibility date had to be corrected, submitted that the case was even more serious than *R v Robinson* [2007] QCA 99, upon which he relied in support of his submission. There was a gross breach of trust by the abuse of his natural daughter by "continually raping and sodomising" her over a six year period, in the context of having molested her in Victoria since she was a toddler. He described the subsequent conviction referred to above as an important feature.

[13] It is, however, difficult to identify any sound basis upon which the subsequent offence can have an influence on the sentence for the present offences. Deterrence, denunciation and protection of the community can be adequately expressed without the need to rely on it. He was plainly sentenced for it on a basis that misrepresented his past character, but he cannot be punished additionally for that in these proceedings. The implication that any interstate offending for which he has not been convicted can be used to increase the sentence will be further examined later.

[14] With regard to parole eligibility, it was unlikely that the learned sentencing judge's intention was to fix a shorter time than 15 years as the parole eligibility date, which would have been contrary to s 182(2) of the *Corrective Services Act* 2006 (Qld). If the intention was to set a period of effectively about 16 years 8 months, having regard to time already served, before he was eligible to seek parole, it was open to him to do so by virtue of the combined operation of s 182(3) and Part 9 Division 3 of the *Penalties and Sentences Act* 1992 (Qld). But before doing so, there must be "good reason" to do so.[2] It has also often been said that the reasons for such an outcome should be made apparent.[3] It is not necessary to consider whether there

[2] Eg. *R v McDougall* & *Collas* [2007] 2 Qd R 87; [2006] QCA 365.
[3] Eg. *R v Griinke* [1992] 1 Qd R 196 at 202; *R v Kitson* [2008] QCA 86.

was sufficient compliance with those requirements because the recommendation must be reconsidered in any event in view of the conclusion reached about the head sentence.

[15] The complainant was born in March 1985. Part of the uncontradicted background facts before the learned sentencing judge was that the applicant had been sexually interfering with the child since she was three years old. Conduct of that kind, (for which he could not be tried in Queensland), had occurred during the period when the family was living in Victoria, before they moved to Queensland in 1995. The offences in counts 2 to 12 were specific instances of offending that the complainant could identify. In addition to those specific offences, it was common ground, and he was sentenced on the basis, that he had committed offences against the complainant at every available opportunity during the period alleged in count 1, subject to the qualification that as the complainant grew older, she began to resist his advances and the offending became less regular.

[16] Counts 2, 3 and 4 relate to a single occasion within six months of arriving in Queensland. In the schedule of offences it is said that, until this incident occurred, the complainant had thought that applicant's regular consistent offending of the kind that had happened while they had lived in Victoria had ceased. She was in the computer room of their home when he came in and told her to sit on his lap. He rubbed her vagina outside her underpants (Count 2), then took them off and rubbed his penis on her vagina (Count 3). Then he inserted his penis into her anus and moved it backwards and forwards about six times (Count 4). The girl was crying and struggling. As she tried to leave the room he warned her not to tell anyone or she would not be his favourite girl any more. The complainant said that she suffered great pain and distress as a result of the offences.

[17] Count 5, 6 and 7 were committed late in 1996 at the home of a family friend where they had gone to feed a dog belonging to the residents of the home who had gone to Melbourne. The applicant had asked the girl if she wanted to go to the shop to get some ice-cream. However, they went in the opposite direction, to the friend's house. When they were inside the house, the applicant asked the complainant to hug him, which she declined to do. He threatened her that she would not get any ice-cream, so she hugged him, following which he pushed her to the ground and kissed her mouth (Count 5). He then removed her pants. She began to cry and he told her to shut up and not be a naughty girl. He first inserted his fingers into her vagina (Count 6), then inserted his penis and had sexual intercourse with her (Count 7). The girl says that she became hysterical and that the event was very painful.

[18] The offences in counts 8 and 9 occurred some time before the Exhibition in 1998. The applicant asked her to help him with something in the back shed. He closed the door and started to kiss her (Count 8). She asked if she could go, but the accused threatened that if she did not do that for him he would not take her to the Exhibition. He then pulled her pants down and tried to insert his penis into her vagina (Count 9), threatening her again that if she resisted he would not take her to the Exhibition. He ceased having sexual intercourse with her when the complainant's sister was heard calling out outside.

[19] The offences in counts 10 and 11 also occurred in 1998 at premises where the applicant ran a business. The complainant had gone there in anticipation of a lift

home. This was, according to the complainant, one of a number of offences that she could not better particularise that occurred at the premises. She remembered this occasion particularly because it took place in a different room which was "particularly dark and scary". After all the employees had left, the applicant asked the complainant for a cuddle. He began to take down her bike shorts but she objected. He got her to the floor and attempted to rape her (Count 10). He tried to kiss her and when she refused, he grabbed her head and pushed it down on to his penis which she sucked because she was scared (Count 11). She was crying, so the applicant stopped. He gave her $20 when they were on their way home.

[20] Count 12 occurred at the same premises in 1999 or 2000. The applicant took her to a room, lifted up her school dress and attempted to take down her bike pants. He attempted to rape her (Count 12) but she resisted because she feared becoming pregnant.

[21] It was also part of the background that he was sentenced on the basis that at no time was the complainant a willing participant. It was accepted that it was an aggravating feature that the applicant had manipulated the complainant by providing her with rewards and other incentives as a way of coercing her cooperation and by threatening to withhold them if she was not cooperative. There was also information before the learned sentencing judge that the adverse impact of the offending on the complainant had been very substantial.

[22] In *R v SAG* [2004] QCA 286 Jerrard JA analysed numerous authorities relating to the offence of maintaining an unlawful sexual relationship. He noted that while many cases involved more than one child victim, there were many examples of cases in which lengthy sentences were imposed or upheld in appeals where only one child was involved. He listed a variety of matters which, he said, the cases demonstrated to be ones which might substantially increase a sentence for the offence. The list included:

- the young age of the child when the relationship thereafter maintained first began;
- maintaining a relationship for a lengthy period;
- penile rape during the course of the relationship;
- unlawful carnal knowledge of the victim;
- whether the commission of those offences was over a long period;
- whether the victim bore a child to the offender;
- whether there had been a parental or protective relationship;
- whether the offender was being dealt with for offences against more than one child victim;
- whether 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.

[23] When the period of maintaining in Count 1 began, the complainant was just under 10 years old. It extended for 6 years. She was the only victim. Fortunately, she did not fall pregnant. In other respects, all the factors in the list are involved. The main dispute in the present case is not whether the case involves a serious example of the offence of maintaining but what the appropriate level of sentence is for it. The difficulty lies in attempting to fix an appropriate sentence by reference to existing authority. Generally, cases where an offender has gone to trial do not result in a reduction in the sentence from the level merited by the facts and circumstances, unless there is something peculiar to the case to justify it. For that reason the sentencing levels involved in such cases must be read with that in mind. Where the offence is such that it merits a sentence to which a serious violent offence declaration applies automatically, the sentence must also be seen to adequately reflect the benefit available to a person who has pleaded guilty in a timely way. If the facts and circumstances are comparable, the distinction in sentence between cases where there has been a timely plea of guilty and ones where there has been a trial or a late plea should ordinarily be demonstrable.

[24] In *R v C; ex parte A-G (Qld)* [2003] QCA 134, de Jersey CJ observed that the circumstances of these kinds of offences exhibit infinite variation. He continued:

> "… one should not be rigidly tied to ranges as such, but flexible enough to give due allowance to significant variations from case to case".

But, even bearing that in mind, it is not easy to reconcile all the authorities.

[25] The respondent placed particular reliance on *Robinson*. The offender there had been sentenced to life imprisonment after a strongly contested trial. Although it did not involve an incestuous relationship, it did involve a breach of trust by a family friend for whom the child held an affection and with whom she was allowed to spend time alone. The relationship lasted for two years when the victim was aged between five and seven years. Because he was convicted of two specific offences of penile rape as well as maintaining an unlawful sexual relationship with a child of that age, the case was particularly bad. The reasons for judgment do not disclose the details of the other acts constituting maintaining, so for that reason a direct comparison of the cases is, in that respect, not easy. It was said however that the victim impact statement showed the "devastating impact" of the offences on the complainant.

[26] The issue was whether the sentence of life imprisonment was manifestly excessive. Keane JA, with whom Williams JA and Muir J agreed, expressed the view that analysis of *R v K* (1993) 69 A Crim R 236, *R v H* [2001] QCA 167, *R v G* [2002] QCA 381, *R v DAF* [2004] QCA 368, *R v HAA* [2006] QCA 55, *R v PAD* [2006] QCA 398 tended to support a sentence of imprisonment of up to 18 years in a case involving the kind of offending found in *Robinson* even where the offender had the benefit of a plea of guilty, but would not support a life sentence.

[27] The final level of sentence of 18 years was imposed to avoid an anomaly, thought to exist, that reduction of the sentence from life imprisonment to 20 years imprisonment, said to be justifiable by extrapolation from the cases previously

referred to, would result in the prisoner serving 16 years before parole eligibility as opposed to 15 years for a life sentence.[4]

[28] *R v H* is a worse case than the present case. The level of intimidation and violence was substantially higher and it involved offending over six years against three children, a male and female of his own and a neighbour's daughter. He pleaded guilty. It was said in that case that the sentence of seventeen years was "on the high side" but not one with which the court should interfere.

[29] In *R v K* (unreported, Court of Criminal Appeal, Qld, CA No 13 of 1991, 28 March 1991) there was said to be "corruption of a seven year old child" by her uncle, which continued for a little over four years. It was decided before the serious violent offence declaration formed part of the law. The sentence imposed in that case, which was held not to be manifestly excessive, was 15 years. Because there was no express recommendation for early release, the prisoner would have had to serve only seven-and-a-half years before becoming eligible for parole. For that reason, the issue may arise of whether it is necessarily a reliable guide to the level of sentence that would have been imposed in a similar case if a serious violent offence declaration had to be made, or whether the sentence might have been moderated within the appropriate range because of the consequences of the declaration (*R v McDougall and Collas* [2007] 2 Qd R 87; [2006] QCA 365).

[30] The difficulty in accepting the respondent's submission as to the appropriate level of sentence is that the present case is, on analysis, not easily distinguishable from cases where, after a plea of guilty, sentences of a lower level than that propounded by the Crown have been imposed.

[31] At sentence, the Crown Prosecutor's submission was that the sentence was in the range of 10 to 12 years having regard to Court of Appeal authority. Defence counsel supported that submission. The learned sentencing Judge put counsel on notice that he thought that the range was "unrealistic and bears no relationship to the gravity of the offending". Although the case is not mentioned by name, it is apparent from the subsequent discussion between him and the Crown Prosecutor that he had also been the sentencing Judge in *Robinson*, and was aware of the approach of the Court of Appeal in that case. He pointed out, correctly, that he was not bound by submissions of counsel in the present case.

[32] It is also apparent from the tenor of his remarks during submissions that he accepted that, in the present case, there had been a very large number of rapes and attempted rapes as well as other forms of indecently dealing committed. The written statement of particulars of offences tendered is not very informative in that regard. It commences:

> "In addition to and including the offences particularised below, the complainant remembers the accused committing offences of a like nature against her at every available opportunity during the offence period".

In his oral submissions, the Crown Prosecutor expanded on that, saying that the offences involved regular and persistent digital and penile intercourse with the complainant over about a six year period. Although not repeated in the sentencing

[4] This may not have had regard to the principle in s 182(2) *Corrective Services Act* 2006 (Qld) and similar earlier provisions.

remarks, there was discussion during submissions about quantification of the particular forms of offending by arithmetical calculation. The material placed before the sentencing judge about the frequency of the more serious forms of offending was not particularly specific. In the absence of anything more specific than what was before the court, such an approach is fraught with difficulty.

[33] But, having said that, it was not disputed that, in addition to the charged individual offences, there were numerous other acts of a sexual character, some very serious, committed during the six year period charged in the indictment for the offence of maintaining an unlawful sexual relationship. There is no reason to exclude that uncontested fact from consideration for the purpose of sentencing. If any conceptual underpinning is required, it is to be found in the nature of the offence itself and conclusions 1(b) and (c) in *R v D* [1996] 1 Qd R 363 at 403, where it was said:

> (b) Common sense and fairness determine what acts, omissions and matters constitute the offence and the attendant circumstances for sentencing purposes; and
>
> (c) an act, omission, matter or circumstance within (b) which might itself technically constitute a separate offence is not, for that reason, necessarily excluded from consideration.

[34] As previously mentioned, there was information before the court that the same kind of offending that comprised the count of maintaining an unlawful sexual relationship had occurred in Victoria in the years prior to the applicant and his family moving to Queensland. There is authority that the sentencing court is not entitled to take into account, except for limited purposes, offences which it has no jurisdiction to try (*R v Warn* (1937) 26 Cr App R 115; *R v Simons* [1953] 2 All ER 599; *R v H, ML* (2006) 96 SASR 139; [2006] SASC 357.)

[35] In the last mentioned case, the accused lived in Victoria but close to the South Australian border. He was convicted of two sexual offences committed in South Australia on his daughter, with allegations of numerous other acts committed in Victoria being admitted in evidence at his trial. The question of the use that may be put to evidence of this kind at trial may raise somewhat different issues from its use on sentence (see, eg. *R v KP; ex parte Attorney-General (Qld*) [2006] QCA 301; *R v Josifoski* [1997] 2 VR 68). In dealing with the position for the purpose of sentence, Debelle J said that he was being sentenced only for the offences for which he was convicted. Consideration of the uncharged acts was only for the purpose of determining the context in which the offending was committed and, in particular, deciding whether the offending involved was isolated conduct.

[36] White J said that such uncharged conduct could not be used to increase the potential maximum punishment. Also, while the conduct in Victoria meant that leniency could not be extended, it could not be regarded as aggravating the offences for which the applicant was to be sentenced. However, in a case where it might otherwise be thought that the conduct charged in the sentencing jurisdiction was isolated, information about uncharged conduct in another State might be used for the purpose of rebutting that proposition.

[37] Whether the proposition referring to denial of leniency is consistent with the third conclusion in *R v D* need not be explored for present purposes. In the present case,

there is no dispute that there was a course of conduct in Queensland which extended over about six years and that a variety of sexual acts, some of which were particularly serious in nature, were committed by the applicant whenever the opportunity arose. The nature of the offending in Queensland was protracted and serious. It merits a lengthy term of imprisonment in its own right. It is, in the circumstances, unhelpful in principle to invoke a "context" argument, if the purpose was to suggest that the sentence should be increased to take it into account, or to speculate about the likelihood or otherwise of the other offending committed in the other jurisdiction being prosecuted there in support of increasing the sentence here. No more can be said than that such offending is within the province of the prosecuting authorities there and would, if conviction occurred, be the subject of a separate sentence there presumably subject to totality issues of the kind discussed in *R v Jensen; ex parte Attorney General (Qld)* [1996] QCA 182.

[38] Also, if interstate conduct were to be taken into account in Queensland as a factor that led to an increased sentence, that fact may complicate the prosecution process in a jurisdiction where an alleged offender was to be dealt with subsequently.

[39] Analysis of numerous authorities has been conducted in some detail in cases such as *R v SAG* and *R v BAY* [2005] QCA 427. Repetitive analysis of them is unnecessary. The cases generally and others particularly referred to by counsel,[5] some of which were pleas of guilty and some of which involved a late plea or a plea of not guilty, reveal a diversity of outcomes, but generally between 10 to 15 years. That reinforces what de Jersey CJ said in *R v C; ex parte A-G (Qld)*, previously referred to. Ultimately, assessment of the individual circumstances of this case within the constraints, for jurisdictional reasons and to achieve an outcome that is of a kind that is not inconsistent with other broadly comparable cases, leads to the conclusion that the sentence imposed for maintaining was manifestly excessive.

[40] The applicant's plea of guilty has to be given adequate recognition because it has resulted in the complainant not having to undergo the ordeal of giving evidence. Because the level of sentence will trigger an automatic serious violent offence declaration, that can only realistically be achieved by reduction of the sentence that would otherwise have been appropriate in the absence of a timely plea of guilty. After performing that exercise, a sentence of 12 years imprisonment for Count 1 is consistent with the current state of authority.

[41] The remaining issue is the level of sentencing for the particular offences including the submission that it was erroneous to punish the applicant by imposing sentences other than recording a conviction for them. With regard to the last mentioned matter, s 229B(8) of the Code authorises the court to convict and punish for offences charged in relation to the child in the course of an unlawful sexual relationship. The learned sentencing Judge was not wrong to impose sentences for them. *R v Robinson and Stokes* [2000] 2 Qd R 413, relied on by the applicant was concerned with a section of the Code without a comparable provision to s 229B(8) and is distinguishable. However, the sentences imposed for the individual offences are, in my view, manifestly excessive. It was submitted that sentences appropriate to the individual offences in the context in which they occurred should be imposed in substitution for those imposed by the learned sentencing Judge. It was accepted

[5] *R v GQ* [2005] QCA 53; *R v HAP* [2008] QCA 137*; R v C*; *ex parte A-G (Qld)* [2003] QCA 134; *R v BAY* [2005] QCA 427; *R v AP* [2003] QCA 445; *R v PAD* [2006] QCA 398*; R v S* [1993] QCA 367.

by counsel for the applicant that the most serious counts, 1, 4, 7 and 9 should have the same level of sentence imposed.

[42] The orders that I would make are the following:

1. Leave to appeal against sentence is granted.

2. The appeal is allowed in respect of each of the sentences imposed in the District Court at Southport.

3. The sentences imposed are set aside and in lieu thereof the following sentences are substituted:

   Counts 1, 4, 7 and 9: 12 years imprisonment

   Counts 10 and 12: Eight years imprisonment

   Counts 2, 3, 5, 6, 8 and 11: Five years imprisonment

   The offences in Counts 1, 4, 7 and 9 are declared to be serious violent offences.

   It is declared that 958 days spent in custody from 8 October 2005 to 23 May 2008 both inclusive be taken into account as time already served under the sentences.

[43] **DAUBNEY J**: I respectfully agree with the reasons for judgment of each of Fraser JA and Mackenzie AJA, and with the orders proposed by their Honours.