SUPREME COURT OF QUEENSLAND

CITATION:	*R v Pandelis* [2009] QCA 25
PARTIES:	**R** **v** **PANDELIS, Simeon** (applicant/appellant)
FILE NO/S:	CA No 319 of 2008 DC No 2556 of 2007
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	20 February 2009
DELIVERED AT:	Brisbane
HEARING DATE:	17 February 2009
JUDGES:	Keane and Chesterman JJA and Atkinson J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**The application for leave to appeal against sentence is dismissed**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant appeals against a sentence of six years imprisonment on one count of unlawful sodomy against a 16 year old boy – where applicant was on a suspended sentence for similar offences at the time of the offending – whether the sentence imposed was manifestly excessive CRIMINAL LAW – SENTENCE – RELEVANT FACTORS – NATURE AND CIRCUMSTANCES OF OFFENDER – PRIOR CRIMINALITY – where applicant had substantial serious criminal history involving similar offences – whether sentence was manifestly excessive CRIMINAL LAW – SENTENCE – PURPOSE OF SENTENCE – DETERRENCE – PROTECTION OF COMMUNITY – whether other potential victims require protection *Child Protection (Offender Reporting) Act* 2004 (Qld), s 36

R v Main [1993] QCA 408, cited
R v Murphy [1997] QCA 45, cited

COUNSEL: The applicant appeared on his own behalf
P F Rutledge for the respondent

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the Respondent

[1] **KEANE JA:** I have had the advantage of reading the reasons for judgment prepared by Atkinson J. I agree with her Honour's reasons and with the order proposed by her Honour.

[2] **CHESTERMAN JA**: I agree, for the reasons given by Atkinson J, that the application should be dismissed.

[3] **ATKINSON J**: The applicant seeks leave to appeal against a sentence imposed upon him in the District Court of Queensland on 11 November 2008. On that date he was sentenced to six years imprisonment on one count of unlawful sodomy committed on 5 October 2006. Pre-sentence custody of 314 days was declared as time served under the sentence. The applicant had been convicted of sodomy on being found guilty by a jury on 7 August 2008. An appeal against conviction was abandoned.

[4] The applicant committed the offence on a 16 year old boy whom he had met on the day of the offence. The complainant was a naïve, immature sixteen year old who lived rough on the streets. The applicant was 49 years old. The complainant was introduced to the applicant by some other young people and spent the day in the company of the applicant who bought alcohol for the complainant and his teenage friends. At the end of the day the applicant invited the complainant to go with him in his car when he went to pick up another young man who regarded the applicant as a father figure.

[5] The applicant then drove the complainant to an isolated spot in bushland just after nightfall and instructed the applicant to remove all his clothing. The applicant then committed the criminal offence of which he was found guilty at trial. The complainant's evidence was that he did not object because he was afraid of the applicant. The applicant was a much older and larger man who sexually preyed upon a vulnerable young man.

[6] Unfortunately the applicant's criminal history showed that this was consistent with his past behaviour. His first offence was committed in May 1974 when the applicant was only 17 years old. He was convicted of carnal knowledge against the order of nature and sentenced to two and a half years imprisonment when he committed sodomy upon a 9 year old boy after pretending to be a policeman and taking the boy at knife point from a railway station to a grassed area nearby.

[7] Upon his release from prison he was convicted in June 1976 for indecent dealing with a boy under 14 years on 28 January 1976. The applicant was then 19 years old and the offence occurred when he was visiting the child's mother. He was sentenced to six months imprisonment and probation for two years.

[8] In December 1979 he was convicted of three counts of carnal knowledge against the order of nature committed between January and June 1978 and two counts of indecent dealing with a boy under the age of 17. He was sentenced to five years imprisonment on each of the carnal knowledge counts and three years imprisonment on the indecent dealing counts each to be served concurrently. At that time the applicant was 21 years old and the criminal offending was committed against three boys on separate occasions.

[9] In December 1984 the applicant was convicted of stealing with actual violence while armed with an offensive weapon. The offence occurred in April 1984. He was sentenced to two years imprisonment with a recommendation that he be considered for release on parole after serving nine months.

[10] This was followed by a conviction on 21 June 1985 for an offence that had occurred earlier, on 28 November 1983, of carnal knowledge against the order of nature. The applicant was then 26 and the child was under 17. He importuned the child at a pool hall.

[11] Then on 6 September 1985 the applicant was convicted of the very serious charge of attempted murder which had been committed in December 1983. After an Attorney-General's appeal he was sentenced to 10 years imprisonment. That offence involved him providing a knife to two teenage boys whom he spoke to about killing a 26 year old man. When they returned saying that they had stabbed the man he told them to go back and make sure he was actually dead.

[12] While he was in prison he was convicted of wilful and unlawful damage to property in 1988 and also carnal knowledge against the order of nature committed on 11 March 1988.

[13] On 26 March 1998 the applicant was convicted in the District Court on one count of conspiracy to murder. That offence was committed on 10 September 1996. The applicant was sentenced to six years imprisonment and recommended to be considered eligible for parole after serving two and a half years. At the time of the arrest of himself and co-conspirators he was travelling in a car with a sawn-off shotgun, blocks of cement, chains and clothing. The applicant had become upset with the intended victim because he believed he had seduced the applicant's young companion and therefore he decided to kill the intended victim.

[14] Finally on 26 November 2004 the applicant was convicted of attempted indecent treatment of children under 16 years committed on 20 November 2003. The offence was a relatively minor one but the boy that he sought to importune was 13 years old and someone he knew because he was a friend of the boy's mother. He picked up the child from school and took him to a park and said to him "I'll give you $100 to suck my dick." When the boy refused, the applicant took him home. The applicant pleaded guilty and it was a full hand up committal. He was sentenced to six months imprisonment, suspended for five years after serving two months imprisonment. He was directed to report for a period of 10 years after his release from custody. It was during that period of suspended sentence that the offence for which he was sentenced presently before the court was committed.

[15] The sentencing of the applicant had been adjourned after his conviction to enable his legal representatives to obtain a psychologist's report. That psychologist's report by Mr Peter Perros was before the court. The psychologist's report refers to

the applicant as being "morbidly obese" and refers to education he did in prison in New South Wales. I note there was no criminal history from New South Wales before the sentencing judge. He reported to Mr Perros that he had been raped as a child. The psychologist's report also reports that he was expelled from boarding school at the age of 12 for sexual misbehaviour which the applicant told him occurred after he was again raped.

[16] The prosecution contended that the appropriate range of sentence for the offence was six to seven years imprisonment and the defence submitted that it was five to six years imprisonment.

[17] The learned sentencing judge referred to the offender's age, his history of offending, the psychologist's report and a reference from a prison chaplain; the circumstances of the offending which included that the applicant engaged in a measure of predatory behaviour against a so called "street kid" but there was no suggestion of violence or force or physical injury to the victim. His Honour referred to the fact that the applicant was the subject of a suspended sentence, the need for personal deterrence, the need for the general deterrence which is required for sentences of this nature which involve crimes against younger and vulnerable boys and also the need to protect other potential victims in the community.

[18] He was sentenced to six years imprisonment and ordered to serve the whole of the unexpired portion of the suspended sentence cumulatively upon the sentence of six years imprisonment. Three hundred and fourteen days in pre-sentence custody was declared time served pursuant to the sentence.

[19] The sentence was then within the range advocated for by both prosecution and defence and is amply supported by authority. In *R v Murphy* [1997] QCA 45 a sentence, of six years for sodomy was reduced to five years on appeal. He was also convicted a further nine offences on which verdicts of acquittal were entered on appeal. McPherson JA with whom the President and Derrington J agreed observed that in arriving at the overall sentence of six years the counts on which verdicts of acquittal had been entered on appeal had no doubt contributed to the length of the sentence. His Honour observed that sodomy is a serious offence but that Murphy was otherwise free of criminal convictions. The complainant was said to have suffered no permanent physical or psychiatric consequences as, because of stupefaction, he was not aware that the offence had been committed. The boy in that case was 13 and a half years old. In *R v Main* [1993] QCA 408 there was one act of sodomy on a boy aged 12 and the beginning of an attempt at another on a boy aged 10. The offences were isolated and not repeated and there was no violence or force of any kind used. The appellant had a criminal history but not for similar offences. A sentence of seven years was reduced on appeal on five years imprisonment.

[20] These cases support the prosecution submission made before the sentencing judge and show that the sentence was not manifestly excessive.

[21] Furthermore this is a case as the learned sentencing judge rightly observed in which protection of the community against offending by the applicant is more than ordinarily important. Mr Pandelis has been a predatory sex offender against vulnerable young men throughout his long and dismal criminal career. He offended

while he was subject to a suspended sentence and while he was a reportable sex offender.

[22] The applicant also complained about reporting conditions imposed upon him. These reporting obligations were not part of his sentence but were automatically imposed pursuant to s 36 of the *Child Protection (Offender Reporting) Act* 2004 and as such are not and could not be properly the subject of an appeal against sentence.

[23] I would dismiss the application for leave to appeal against sentence.