Supreme Court of Tasmania

[Index] [Search] [Download] [Context] [Help]

R v Daniels, Louis Victor [1999] TASSC 62 (28 May 1999)

Last Updated: 28 May 1999

[1999] TASSC 62

CITATION: *R v Daniels* [1999] TASSC 62

PARTIES: R

v

DANIELS, Louis Victor

TITLE OF COURT: SUPREME COURT OF TASMANIA

JURISDICTION: CRIMINAL

FILE NO/S: 391/1998

DELIVERED ON: 28 May 1999

DELIVERED AT: HOBART

HEARING DATE/S: 23 April, 10, 11 and 24 May 1999

JUDGMENT OF: Slicer J

CATCHWORDS:

Criminal Law - Jurisdiction, practice and procedure - Judgment and punishment - Sentence - Factors to be taken into account - Factual basis for sentence - Sentence to be of and related to offence - Generally - Actions constituting offences not charged - Sexual offences.

R v Di Simoni (1981) 147 CLR 383, applied.

Abel v R A94/1994; *Newman and Turnbull v R* (1995) 81 A Crim R 191; *R v Sessions* (1997) 95 A Crim R 151; *Gipp v R* (1998) 155 ALR 15, considered.

Abel v R A94/1994; *H v R* (1981) 3 A Crim R 53; *R v D* [1996] 1 Qd R 363, followed.

Aust Dig Criminal Law [820]

REPRESENTATION:

Counsel:

Prosecution: M A Stoddart

Accused: O M Garrott

Solicitors:

Prosecution: Director of Public Prosecutions

Accused: Piggott Wood and Baker

Judgment Number: [1999] TASSC 62

Number of Paragraphs: 12

Serial No 62/1999

File No 391/1998

THE QUEEN v LOUIS VICTOR DANIELS

REASONS FOR JUDGMENT SLICER J

28 May 1999

1 Louis Victor Daniels has pleaded guilty to four counts of indecent assault contrary to the *Criminal Code*, s127, and two counts of unlawful sexual intercourse contrary to the *Criminal Code*, s124, with a 15 year old youth in 1992. The crimes were committed on two occasions in February and April 1992. The offender, then aged 45, was an Archdeacon of the Anglican Church and the incumbent of the Anglican Parish of Burnie. The complainant, a member of a family strongly attached to the Anglican Church at the relevant time, was involved in church activities and had become a member of the Church of England Boys Society. In February 1992, the offender invited the complainant and two other youths to spend a weekend at his holiday shack at Meander. The sexual misconduct alleged in counts 1 to 5 occurred during the course of that weekend spent at Meander. Although no force or coercion was employed, the disparity in age and status, and the existing relationship between the offender and the complainant rendered the compliance of the complainant one of simple acquiescence to the will of another. In the complainant's words:

"I wasn't physically scared of Lou, but I felt pressured that I had to and if I got in with him this once he would leave me alone. I was alone, there was really no one I could tell about this and he was two steps below a bishop and well respected. I didn't think that anyone would believe me even if I did say anything."

2 Further sexual misconduct occurred in April following attendance at a concert in Launceston. There had been some instances of sexual contact between the two during the interval between the counts set out in the indictment. That conduct does not permit the crimes alleged to be viewed as a lapse of judgment or an isolated incident

committed by an accused of essentially good character (*Abel v R* A94/1994; *H v R* (1981) 3 A Crim R 53). However, the offender can only be punished for the crimes alleged and to which he has pleaded guilty. The intervening misconduct cannot be regarded as an aggravating matter (*R v Di Simoni* (1981) 147 CLR 383), but operates simply to deprive the offender of the benefit of particular mitigatory matters.

3 During the course of the sentencing hearing the Crown stated that following the events of April 1992, the sexual misconduct continued on a regular basis, until after the youth had turned 17. A further indictment was filed alleging acts of indecent practice contrary to the *Criminal Code*, said to have occurred in 1994 after the complainant had reached the age of 17. A *nolle prosequi* was subsequently filed since the operation of the *Code*, s7, rendered such conduct lawful as of the date of trial or hearing. No further charges have been laid (see *Newman and Turnbull v R* (1995) 81 A Crim R 191). Nevertheless, the Crown contends that a sentencing court can pay regard to subsequent acts of sexual misconduct in the determination of penalty. It is said that those acts are relevant in that they are the product of and show the long-term effects of the initial act of seduction, and might give colour to the offender's original purpose. It is further said that the persistence of conduct demonstrates that the events of February and April should not be viewed in isolation. Mr Daniels concedes continuing sexual contact, but contests some of the particulars referred to by Crown counsel. In the event of a ruling adverse to the offender, it might be necessary to take further evidence. The Court will not, except in one limited way, have regard to subsequent conduct in the determination of penalty. An offender is entitled to be punished only for the crimes to which he has pleaded. A court, consistent with the reasoning of the sentencing judge, considered by the Court of Criminal Appeal in *Abel v R* (supra), is entitled to pay regard to intervening conduct in its consideration of mitigating matters. It is not entitled to pay regard to conduct additional and subsequent to that set out in the indictment.

4 It is said that the court can pay regard to the consequences of criminal conduct (*Inkson v R* (1996) 6 Tas R 1), but in circumstances such as these the only relevant consequence is the effect on the well-being of the victim. The consequence of further sexual conduct, physically accepted by the complainant, is not one which can be taken into account in the determination of penalty. A further approach was suggested by counsel for the prosecution. It was contended that evidence of subsequent sexual contact can be used to infer that the initial act of seduction was designed to achieve further compliance (*Newman and Turnbull v R* (supra)). Accepting, for the purpose of this determination only, that such a proposition is tenable, there is no evidence which supports that inference. There is no evidence that the initial sexual contact was intended to produce an ongoing and compliant partner. Such an inference would be tantamount to a finding of procuration. The effect would be the use of subsequent conduct to show the commission of a more serious crime than the one charged (*R v Sessions* (1997) 95 A Crim R 151; *Gipp v R* (1998) 155 ALR 15). The Queensland Court of Appeal has examined in detail the relevant principles and authorities in its decision in *R v D* [1996] 1 Qd R 363. In the course of its review the court quoted with approval Duggan J, who, in *Godfrey* (1993) 69 A Crim R 318, said:

"That is not to say that the sentencing judge cannot take into account the context and

surrounding circumstances of the crime charged. It may be that in a particular case the court will be required to consider whether it is entitled to extend leniency on the basis that it is dealing with an isolated offence. But it cannot increase the sentence by reason of a finding on a disputed facts hearing that offences not admitted or asked to be taken into account have in fact been committed. To do this would be to deprive the accused of a proper trial on those counts. The line between the two situations will sometimes be a thin one."

To do so would be to misapply the evidentiary principles governing the use of similar fact evidence on a trial (which upon conviction would entitle the sentencing court to punish for the "similar fact") and to punish an accused for matters not specified at the time of the entry of a plea. The sentencing court might pay regard to events occurring during the dates between the first and last acts specified in the indictment in the manner discussed in *Abel v R* (supra) and *R v F* 74/1998, and might be able to pay regard to previous conduct to place the accused's acts within a factual matrix and rebut any suggestion that the conduct was a casual isolated instance (*H v R* (1981) 2 A Crim R 53), but not otherwise. In relation to subsequent conduct, the following statement of Hunt CJ in *R v Beserick* (1993) 30 NSWLR 510 at 525:

"It could not usually be said that the evidence of *subsequent* sexual activity is relevant in order to place in its proper context the evidence of the earlier activity upon which the offence charged is based. I am not prepared to say that it could never be relevant for that purpose, but the cases in which it would be relevant for that purpose must surely be unusual ones."

is apposite. There is one exception. A sentencing court may pay regard to the effects of the misconduct on a victim. In doing so it might be required to discount some of the effects of harm because the harm was caused in part by repetition. That approach might, in some circumstances, advantage the offender. Conversely, the court might be able to discern consequences of the original act or acts by reference to subsequent events. That approach will be taken in the determination of the penalty to be imposed on Mr Daniels. The seduction of the complainant rendered him more susceptible to the sexual advances of an older male. To that extent only regard is had to the subsequent sexual contact.

Effect on complainant

5 The complainant has been significantly affected by the conduct of Mr Daniels. In a statement provided to prosecuting counsel he stated:

"Since 1995 I have gradually been on the mend. I have begun to be able to sleep through a full night however I have still been suffering from nightmares. I have had trouble holding a relationship together until recently. I also have suffered bouts of depression. Other than this I started off forcing myself to try and forget what had happened. I also have suffered from bouts of depression. I have been trying to live a normal life and over the last year of [*sic*] so have begun to succeed in doing so."

6 It would appear that he has been able to put his life in order and thereby reduce the severity of long-term harm. Some, but not significant, weight will be given to the

degree of long-term harm caused.

Post disclosure events

7 In 1994, the complainant made a series of allegations to police and the matter was investigated. Mr Daniels was interviewed in September 1994 and denied the allegations. No proceedings were commenced.

8 Following the investigation and the involvement of church authorities, Mr Daniels resigned his parish position and left the priesthood. It is fair to say that his life began to disintegrate from that point. In February 1998, the investigation recommenced following a special church inquiry and the offender was re-interviewed. He again denied wrongdoing. Following committal proceedings, an indictment was laid in early 1999, following which an indication of plea was given to the prosecution. The offender is not entitled, as a mitigating matter, to the benefit of co-operation and early plea. He has spared the complainant having to give evidence on the trial, but any benefit is, in part, offset by the requirement of examination in the course of committal proceedings. The Court accepts that the offender first realised the harm which he had caused when he saw the complainant give evidence during the course of committal proceedings. To that extent, the Court accepts some element of remorse.

Effect on offender

9 Following disclosure by the complainant, Mr Daniels left the priesthood and lost the benefits and solace of his position. He had been active within the general community and held positions of trust and responsibility. He has suffered public shame, loss of status and has lost income and assets. He left Tasmania and commenced employment as a teacher in the Australian Capital Territory. Following the church inquiry his new employer was advised of the nature of the allegations made against the offender and his employment within the education system ceased. He obtained casual work and then completed a Diploma of Librarianship. He might experience some difficulty in obtaining future employment. The Court takes into account the fact that the offender has already received punishment through public exposure, loss of position, status and income. His long record of public service and commitment has been destroyed by misconduct. However, the loss of status reflects the degree of breach of trust placed in the offender by the community, his church and friends. The abuse of position and trust warrants, despite the punishment already endured, the imposition of a significant sanction.

10 The appropriate penalty is a sentence of imprisonment for a period of 12 months. Had the subsequent conduct been taken into account, the sentence would have been significantly greater.

Suspension

11 Mr Daniels has a long history of service to the community. He is now aged 51. The Court is permitted to take into account his conduct and state of life following disclosure (*Smith v R* (1981 - 1983) 7 A Crim R 437; *R v Todd* (1982) 2 NSWLR 517; *Duncan v R* (1982 - 1983) 47 ALR 746). His circumstances permit the suspension of

portion of the sentence. Three months of the sentence will be suspended.

Orders

12 (1) That Louis Victor Daniels be sentenced to a term of imprisonment for a period of 12 months, such sentence to commence as and from 23 April 1999.

(2) That the operation of the last three months of the sentence be suspended upon condition that Louis Victor Daniels commit no crime or offence of a sexual nature for a period of two years following release from prison.

I direct that the Victims of Crime Compensation Levy of $300 be paid within four months of the date of release from prison.