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DISTRICT COURT

CRIMINAL JURISDICTION

JUDGE McGUIRE

Indictment No 2270 of 1998

THE QUEEN

v.

FRANCIS EDWARD DERRIMAN

BRISBANE

DATE 10/12/98

SENTENCE

HIS HONOUR: Francis Edward Derriman, you have been found guilty by the jury on two counts of indecent dealing with a girl under the age of 16. You were acquitted on a third count. The offences were committed in 1968 when the complainant was a student aged 15 of the Sacred Heart Convent Sandgate and you were a priest who ministered to the school. She was aged 15. You were aged about 30.

In the trial the Crown adduced evidence of what has become known as the Brown Family, the Lolita Book, letters by you a[redacted] your health, through the complainant, for the purpose of showing the unusual relationship that existed between you and the complainant and also for the purpose of showing that you used these devices as a softening-up process so as to condition the complainant for your attempted seduction of her. This same evidence was also used to explain why the complainant did not complain about your sexual advances at the first reasonable opportunity which offered itself.

I [redacted]ake into account not only the acts themselves but the modus operandi you employed. You made it clear to the complainant that your aim was to have sex with her. You played on her emotions and sympathy by pretending you were so chronically sick as to be in danger of imminent expiration. However, to your credit, you desisted when she protested.

The case is a bad one because of the unequal relationship between you and the complainant. You were a priest and she

was a schoolgirl. It is appalling to think while acting in the capacity of a priest you tried to seduce her. The bushland episode betrays a good deal of premeditation and deceit and the same can be said about the drive-in episode.

I cannot myself characterise these episodes as altogether minor. One cannot divorce the acts themselves from the lead-up to them and the circumstances surrounding them. The second episode lasted some minutes. By virtue of your office you were in a position of dominance over the complainant. Your acts constituted a gross and flagrant betrayal of priestly trust. The feature of the case is the long delay in prosecuting the matter.

I will now deal with delay and effect of delay on sentence. In the case of Dick (1994) 75 Australian Criminal Reports the Western Australian Court of Appeal said:

> "So far as the lapse of time since the offences is concerned" - in that case 30 years also - "there is said to be a distinction between offences of dishonesty, robbery, and the like, and sexual abuse. Although referring to the position within a family, Lord Justice Taylor, speaking for the English Court of Appeal in Tiso (1990) 12 Criminal Appeal Reports observed of offences involving sexual abuse that they are, by their very nature, likely to remain undetected for substantial periods, partly because of fear, partly because of family solidarity, and partly because of embarrassment."

The Court went on to say:

> "We consider that whilst any factors which have positively emerged between the offences and the trial are open to the Court to be taken into consideration, the mere passage of time cannot attract a great deal of

> discount by way of sentence in relation to offences of this kind."

And in the Queensland case of Law (CA 176 of 1995, judgment delivered on 6 October 1995) the Queensland Court of Appeal without reference to Dick, which had been decided before Law, said:

> "It is difficult to see why a lapse of time between commission of an offence and sentence should be a mitigating factor in sentence unless that delay has resulted in some unfairness to the offender. There are two obvious cases in which that will be so and in which, consequently, it has been said that unfairness should mitigate the sentence which should otherwise be imposed."

The first is inordinate and unexplained delay in investigating a complaint or in prosecuting it. The second is "Where the time between the commission of the offence and the sentence is sufficient to enable the Court to see that the offender has become rehabilitated, or that the rehabilitation process has made good progress."

The Court went on to say:

> "There may well be other bases for mitigation arising out of a lapse of time between commission of an offence and sentence, involving general notions of fairness."

I now deal with changes in the law. At the relevant time, 1968, the maximum penalty for indecent dealing with a girl under 17 was two years' imprisonment. I stress that. The maximum penalty at that time was two years' imprisonment. Since then the maximum penalty has risen progressively from two to five, from five to seven, and from seven to 10 in

1997. These progressive increases in penalty for this class of offence reflect no doubt a change in community attitudes which have come about by reason of the realisation of the prevalence of these offences within the community, a fact which has long been concealed.

Section 11(2) of the Criminal Code provides:

> "Effect of changes in the law. If the law in force when the act or offence occurred differs from that in force at the time of the commission the offender cannot be punished to any greater extent than was authorised by the former law."

That means that so far as these offences are concerned the old sentencing regime (i.e. the 1968 regime) applies: see Richardson v. Brennan (1996) WAR 159. However, I doubt whether in arriving at an appropriate head sentence one is obliged or that it is appropriate to do a proportional sum.

In my opinion, this is the sort of case where the sentence imposed should act as personal deterrence as well as a general deterrence, and there is also in these type of cases a denunciatory purpose in the sentencing to be served.

The complainant does not allege that you used physical force on her. However, by virtue of your position of dominance in relation to her you exerted moral coercion, a much more subtle and sinister thing. There are probably good though complicated psychological reasons why the complainant did not complain at the appropriate time. Nevertheless, delays such as have occurred here in bringing the matter to the

attention of the authorities makes the task of sentencing even more difficult than it ordinarily is in cases of this kind.

There is much truth in Lord Chancellor Bacon's aphorism, "Swift justice is best". Retribution in this case, though slow, was sure: the proverbial chickens have come home to roost.

As the authorities show the fact that an offence is old does not diminish its gravity but may, if rehabilitation has occurred between the offence and sentence, be a circumstance of mitigation. I have been shown the impact statement of the complainant. It indicates that these happenings in 1968 have had a severe and continuing detrimental effect on her personally and on her life.

Rehabilitation. A long time has gone by since these offences were committed, 30 years. You left the church in 1970 and married. You presently reside in Ballarat, Victoria. You describe your occupation as social worker, university teacher. You are aged 60. You have no convictions of any kind.

A number of testimonials have been tendered on your behalf. They speak eloquently of your work as a social worker and teacher. You have now, it seems, formed a relationship with the woman by whom you have two young children who are dependent on you. These testimonials taken at face value indicate that you are well regarded personally and

professionally in the community in which you live. I am satisfied, therefore, that you have made strenuous efforts to rehabilitate yourself.

Nevertheless, I am of opinion that the nature and circumstances of the offences are such that a custodial sentence is warranted. The sentence to be imposed is one year imprisonment. However, giving due weight to the rehabilitative aspect referred to above I will order early suspension of that term.

I have considered recent Queensland cases of this kind involving clerics: McKeirnan, District Court, 21 October 1998; Cleary, District Court, 6 November 1998; and Wright, District Court, 9 September 1997.

I now pronounce sentence. In respect of counts 2 and 3 the sentence of the Court is that you be imprisoned for one year. I order that that term be suspended after serving four months for a period of two years during which time you must not commit any offence punishable by imprisonment otherwise the Court will be empowered to order the balance of the suspended term, namely nine months, be enforced or any part thereof it considers just in the circumstances.

MR TAEFFE: With respect, eight months, Your Honour.

HIS HONOUR: Eight months, thank you. Eight months will be enforced or any part thereof it considers just in the

circumstances. The sentences are concurrent and it follows that convictions will be recorded.
