DEPARTMENT OF JUSTICE

State Reporting Bureau

TRANSCRIPT OF PROCEEDINGS

DISTRICT COURT

CRIMINAL JURISDICTION

JUDGE HOWELL

Indictment No 1273 of 1999

THE QUEEN

v.

REGINALD BASIL DURHAM

BRISBANE

..DATE 30/09/99

..SENTENCE

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HIS HONOUR: Father Reginald Basil Durham, a careful jury of 12 responsible citizens is unanimously satisfied beyond a reasonable doubt that you raped this young girl. Consistent with this verdict, you are a bad man indeed. You are an evil man. Your actions involved blinding hypocrisy and a gross and outrageous abuse of your high office and your position of very real trust with a very vulnerable young girl who trusted you religiously. You demeaned your office, an office that merited the highest of respect throughout the community. You demeaned it in a nauseating and reprehensible manner.

In relation to the incident itself, consistent with the jury verdict, having liquor taken, you in an authoritative and frightening tone ordered the young girl into the presbytery, dragged her onto your bed and you then sated your lust with this little girl in a primitive and revolting way, and then callously, dismissively and with stark insensitivity immediately sent her on her way. It was then that the continuating and accelerating and long-term cover up commenced, involving persons as dishonest as yourself and arguably as corrupt as yourself.

What a courageous performance by the complainant to persist when the complaint brought the inevitable traumatic Court

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appearances - in her case, three to date - it was there for all to see her patent discomfort at reliving these horrific experiences. There could never have been, or certainly very rarely so, a sadder chronology of experiences for this unfortunate young girl, culminating in her rape by you, and in a background which is not relevant to the offence, of cruel, barbaric, insensitive treatment by manifestly unsuitable persons at Neerkol.

No right-thinking person would have anything but the most extreme of sympathy and consideration for the complainant. One need hardly go any further than saying that in having been born on 29 September 1952, her unfortunately alcoholic mother died of cancer on 29 October 1964, and that then the person she believed to be her father - who it turned out was her stepfather - abused her in the vilest and most abominable of manners, until he was caught in the act. The result of his being caught in the act was that the complainant was, in fact, condemned to Neerkol, the accused having taken her there with her siblings on 27 September 1965.

It is not unimportant that I now refer to a matter that is not relevant to sentence. The complainant has had no-one to speak out for her in 33 years. I do not propose to let this

matter go through to the keeper. As this violent criminal assault occurred prior to 1 January 1969 when relevant legislation was first introduced, the complainant is unable in law to make an application for compensation for criminal assault at all. The reprehensible attitude of the Church to date in trying to squash the complaint and to cover it up, does not bode well for an honest, compassionate and meaningful approach by the Church in the future to go some way to compensating the complainant for the severe long-term emotional and psychological harm and after-effects caused to her by the defendant priest's actions here. The Church now has unquestionably clear evidence which has satisfied the jury beyond reasonable doubt. The lies, stonewalling, stubbornness and obstructionism of Church representatives in this matter does not give cause for confidence that the Church will now display the honesty and decency to make a meaningful apology and meaningful payment to the complainant from its vast resources.

Sadly to say, consistent with the jury's verdict, the accused, a lifelong priest, lied on oath to the first jury. Further, consistent with the jury verdict, Sister Mary Francis Regis, a singularly unsuitable person of no little cruelty and callousness to have a responsible position in

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charge of children at Neerkol, was not only an unimpressive witness but was an unashamed and unabashed liar.

Further, on consideration of his statements declared under the Oaths Act, and in consideration of his evidence in this Court, very sadly to say, the Bishop of Townsville, Bishop Benjamin, was not only a most unimpressive witness, he clearly manifested his desire and intention not to give truthful evidence, his unwillingness to give truthful evidence. Crown counsel said he considered applying to have the Bishop declared hostile when asked by myself in the absence of the jury, but he said the matter arose, in effect, somewhat quickly and unexpectedly "on the run" when he was on his feet.

Any right-thinking person would take no little convincing that there was any explanation other than an unwillingness to give truthful evidence in the following situation:

He is clearly a very intelligent person. On 31 August 1999 (not 1969) he gave a clear statement expressing matters unequivocally and in short compass. To show his grasp of such matters, on 1 September 1999 he made an addendum statement to clarify such straightforward matter.

In the same month, namely, on 28 September 1999, he gave sworn evidence of such difference, I am of the view that if Crown counsel had applied to have him declared hostile I would have done so. Fortunately, his arguably devious and cunning course did not really affect the case one way or another. His evidence, and that of Sister Mary Francis Regis, afforded yet another sorry chapter in the Church's seeming determination that justice not be done in this matter.

The complainant in December 1966 complained immediately after the offence to Sister Mary Francis Regis, who not only tried to squash the matter but callously punished the complainant for daring to make such complaint. When the complainant could pluck up the courage to complain again to a priest in Western Australia in 1996 the tack adopted by this representative of the church was after "checking" to proclaim that she was a liar and that the accused was not even at Neerkol at the time.

The community might well ask is that blindly hypocrisy and/or corruption by a person or persons with real power. Will the church with due expedition at last apologise to the complainant and forthwith make an ex gratia payment of, say, a substantial six figure sum to her? This might

meet with community standards and expectations. If I had the power to make an unlimited order or any order for compensation for criminal assault it would be for a substantial six figure sum.

Those responsible for the public purse may well think it reasonable to make payment to the complainant forthwith of the current maximum permissible sum for an eligible applicant of $75,000, though they and the community might reasonably say that such sum should ultimately come from the church.

In relation to the evidence of Sister Mary Francis Regis, she attempted to persuade those who were to call her, namely, the Crown, she should have her evidence by telephone because, as I was led to understand, she was allegedly too unwell to come to Brisbane to give evidence. I directed the Government Medical Officer in Rockhampton to examine her and to, in effect, indicate what was necessary for her to be able to give evidence orally in front of the jury. I made that order very late on Monday afternoon and she was available in Brisbane to give evidence when the Court resumed the next morning.

The conclusion is obvious, that she was clearly well enough to come to Brisbane and give oral evidence. One might say it

is just as well she did because her demeanour, which was so unimpressive, would seemingly not have emerged on telephonic evidence. I stress that telephonic evidence shouldn't be used except for unequivocal formal or uncontroversial consent evidence.

There is a tendency, one might say even marked tendency, these days to have telephone evidence if at all possible on the basis that it will save money. This is understandable. It has been my experience that telephonic evidence, unless it is formal and uncontroversial and by consent, creates problems. The limited experiences I have had with it shows that there should be a very real caution before having evidence on telephone.

One can only ask what a life was the complainant condemned to after the unfortunate circumstances in her family. One is left with the conclusion that what a cruel and callous place Neerkol was for a person such as the complainant. One doesn't say for one moment that it approaches the severity of the behaviour in Lawrence, Phillips, Meredith, Toner and Rigby in October 1966 which caused Wanstall J, as he then was, to describe that behaviour as Belsen sadism and Neronian depravity. I don't say it went anywhere near that but cruelty and callousness seem to have been

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present.

If I may return to matters relevant to sentence as distinct from the complainant's inability to sue for compensation for criminal assault, the accused in the first trial in May 1999 may arguably have been too clever by half when seemingly out of the blue after the Crown case was finished he gave evidence that he was a teetotaller. One can only wonder what influence such evidence had on the jury's disagreement in the first trial when independent evidence could not in the circumstances have been called to contradict the accused's evidence. Consideration of the accused's evidence of his being a teetotaller at the time might reasonably have caused some jurors in the first trial to have a reasonable doubt on the complainant's credibility and reliability in her central evidence that the accused, with a breath reeking of Whisky and beer, raped her in the presbytery. The accused probably did not for a moment think that for a retrial that his parishioners, who trusted him and respected him highly, would clearly show what a lie it was for him to say he was a teetotaller.

Epithets used by His Honour Judge McLauchlan in your sentence on 15 February 1999 would not seem inappropriate here, namely that your behaviour was appalling and unforgivable.

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I must in reality sentence you as a first offender because the matter for which you were sentenced to 18 months imprisonment with a recommendation for parole after four months in the order of 15 February 1999 involved behaviour with that young complainant from about December 1960 to about January 1963.

That behaviour was before the incident in the count before me, count 20 in the 22 count indictment, such having occurred in early December 1966 and, to state the obvious, you were not sentenced for the earlier offence until after this offence had occurred. In relation to it I must proceed on the basis that this was an isolated offence. It was one act with this complainant. The offence itself was certainly serious, per se, the raping by a 50 year old male of a 14 year old girl. A very serious matter is the position of trust involved. Can there be any greater breach of trust than a priest committing such act on a child under his care, a member of the same church, of the same religion, with the further combination that the child was in effect an inmate in that church institution of which he was the person, one might say, in charge?

It would be surprising indeed if there weren't serious

psychological and emotional after-effects on the complainant. There have been. One needed to see no more than what the complainant said and did when she left Court part of the way through her evidence on Monday afternoon. She would have thought at the time she was outside the Court and would not be able to be seen or heard. As someone else opened the door she was in my direct line of vision and I heard the words, not only what was said - something like, "How much more do I have to go through?", I don't presume to quote the exact words, and the way it was said but in addition I saw the traumatic and emotional experience it was for her reliving these matters in the witness box.

In my view, the accused is not the slightest bit remorseful, not the slightest bit sorry for the terrible things he has done to this little girl. He is not contrite or remorseful at all. There has been not the slightest cooperation in the administration of justice and allowance is not appropriate under either such head.

Moving on to the matter of allowances, they make this a difficult sentence indeed. If the complainant's immediate complaint had been properly acted on and I was sentencing a 50 year old accused in reasonable health, I would arguably have thought a head sentence of double figures with no

allowances may arguably have been appropriate. That is totally leaving aside any question that under the current Serious Violent Offenders legislation he would have to serve 80 per cent of such sentence if it were at least 10 years.

The very important relevant matters for allowance include the following: the age of the accused - he is aged 83; in relation to his health, Exhibit 10 contains the doctor's report in relation to these problems in relation to his health for which clearly allowance must be made. In that regard, it is appropriate to refer to the remarks of His Honour Judge McLauchlan on 15 February 1999, remarks which I adopt.

> "You are 82 years old (now 83) so you are an old man, now a very old man to have to go to gaol. Secondly, your health is pretty bad. You have a number of conditions and problems which together mean that your health is poor, although your doctor says in effect what might be expected generally for an 82 year old male. I am told that you have had a series of recent falls, I am told that you can not walk without the assistance of a stick. It seems to me that your health poses two matters for consideration. One is that gaol will be a much heavier burden to you than it would be to a well

man, particularly to a well younger man, and the second thing is that gaol may have an adverse effect upon your health because you will be less well placed to receive the sort of treatment, medical treatment, which you obviously need on a regular basis. Those are matters which must obviously be taken into account, otherwise a sentence would bear more heavily upon you than upon someone else, and that in itself would be unfair."

As I say, I adopt those remarks and allowance is appropriate thereunder, arguably not insubstantial allowance, particularly when taken into account in relation to the matter of delay.

Delay is a vexed question indeed. The delay, consistent with the jury verdict, is in no way the fault of the complainant. It is certainly the contrary. She complained very shortly after the incident, and this matter should have been investigated and, if a charge resulted, dealt with and finalised in the year of 1967. As defence Counsel rightly points out, the delay cannot be said or shown to be that of the accused, even if others in the Church did their very best to cover it up, squash it, by whatever means. I must proceed according to the evidence and according to black

letter law, and nothing can be pointed to to say that the accused caused or contributed to the delay, and so clearly a delay of two and a half months short of thirty-three years, must clearly result in an allowance that is more than moderate.

I stress again that he has to be given an allowance for a good work record, even though the two matters of which he has already been convicted arose as a direct result of his work, and a gross abuse of the power thereunder. As a lifelong priest it would go without saying that he has done a lot of good for a lot of people. The signatory of Exhibit 11, Bishop Heenan, the Bishop of Rockhampton, does in fact say that he has in fact done a lot of good for a lot of people and, as I say, allowance has to be made thereunder.

This is an offence for which I say categorically and unequivocally that the deterrent element is more than ordinarily important, and the community would demand a denunciatory sentence.

At the end of the day, taking all those matters into account, you are sentenced to imprisonment for seven and a half years.
