IN THE COURT OF

CRIMINAL APPEAL

60501/97

GLEESON CJ
COLE JA
LEVINE J

Monday 2 March 1998

REGINA v Vincent Gerard RYAN

JUDGMENT

GLEESON CJ: The appellant, who was born in April 1938, is a paedophile. He is sexually attracted to pre-pubescent boys. He is also a priest, who was involved in pastoral work. This placed him, over a long period of time, in close contact with pre-pubescent boys. This combination of opportunity and temptation he exploited to maximum effect.

The appellant came for sentence before Nield DCJ in the District Court at Cooma in September last year, charged with fourteen counts of sexual offences against a total of twelve victims. The offences took place over a period of about twenty years. The ages of the victims at the time of the offences ranged from six to fourteen years. He also asked to be taken into account thirty-nine additional offences of a similar kind. Those additional offences involved some of the victims the subject of the counts in the indictment, and a further sixteen victims.

Nield DCJ imposed total effective sentences, involving penal servitude or imprisonment for sixteen years, comprising a minimum term of eleven years and an additional term of five years. For reasons which will appear, those sentences were to commence on 23 May 2000.

It would be a work of supererogation to elaborate upon the criminality involved in the conduct of the appellant. It is, however, relevant to certain of the submissions advanced on his behalf by senior counsel to observe that it involved breaches of trust of the grossest imaginable nature; breaches of trust reposed in the appellant by parents, by children, and by the church.

The function of this Court is to review the sentencing process, to consider whether it was affected by material error, either of fact or of law, and to judge whether the appellant received that which he deserved, that is to say, measured punishment, administered justly, according to law.

The reason the sentences imposed by Nield DCJ will not commence until 23 May 2000 is that the appellant had on an earlier occasion been dealt with by another judge in the District Court for twenty similar offences. On that occasion the appellant had been sentenced to penal servitude or imprisonment for a total of six years involving a minimum term of four years and an additional term of two years.

Apart from their relevance to the substance of the sentencing exercise which confronted Nield DCJ, the sentences imposed in respect of those earlier offences formed a significant part of the factual background to the present appeal. It appears that the sentencing proceedings on the earlier occasion, and a subsequent unsuccessful appeal against leniency, were accompanied by considerable publicity. It also appears that, as a consequence of that publicity, three men, who, as children, had been victims of the appellant many years previously, came forward and gave information to the police.

When the police interviewed the appellant, who was by that time in custody, he not only made admissions concerning the new allegations but, in addition, informed the police of a great number of other offences and

victims.

In the course of his record of interview he explained why he was doing that. He said that up until he had spoken to his solicitor he thought it was probably best to let the victims come forward as and when they willed. However, he came to realise that this process could be going on for the rest of his life, and that was a prospect he could not contemplate.

That puts in context the matter which was the subject of the principal submission advanced by senior counsel on behalf of the appellant. Acknowledging that Nield DCJ extended some measure of leniency to the appellant on account of his revelation of otherwise unknown criminal conduct, senior counsel has submitted that the learned judge must have given insufficient weight to that consideration. Reference was made to the decisions of this Court in *R v Ellis* (1986) 6 NSWLR 603; and *R v Cartwright* (1989) 17 NSWLR 243. Indeed, contrary to views expressed in this Court in *R v Gallagher* (1991) 23 NSWLR 220, counsel went so far as to submit that Nield DCJ should have given a quantified "discount" for the appellant's revelation of these additional offences.

What Nield DCJ said about the matter in his carefully considered remarks on sentence was as follows:

> *"After being spoken to by police following his having been dealt with for offences of sexual abuse of young boys, he admitted to police his abuse of the further complainants and he told police of the names of all of his victims whose names he could remember, thereby disclosing offences of which police were unaware, and may not have become aware. The Crown's case against him in relation to many of his victims rests solely on his admissions to police. His admissions show his desire to make a complete disclosure of his conduct. These things go to his credit, show his contrition and entitle him to a discount in punishment.*
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> *He pleaded guilty to all of the charges at the earliest appropriate opportunity. His guilty pleas have saved the*

State the time and costs of a committal hearing and a trial, they have relieved his victims of the need to relive the sorry episode in their lives, and they show his contrition. His guilty pleas go to his credit and entitle him to a discount in punishment.

Notwithstanding that he did not give evidence before me and, therefore, I cannot assess for myself the genuineness of his contrition, I accept that his acts since being spoken to by police show that he is contrite for his conduct towards his victims. I mean by this that he now appreciates the harm that his conduct has had upon his victims and that he is sorry that he has caused them hurt and pain and that he wishes to avoid causing them further hurt and pain. But I do not think that he regards his conduct as wrong.

He is likely to be kept on protection whilst in prison for his own safety. This is because other prisoners hold child sexual offenders in contempt. Being on protection means that he will be kept separated from the general prison population, mixing only with other prisoners on protection. This is recognised as making prison life more harsh than it should be otherwise."

A little later the learned judge also acknowledged, as an important matter to be taken into account, the fact the sentences he was imposing would not commence until the year 2000 and were to be served following sentences previously imposed upon the appellant.

It is clear that the learned judge took into account in favour of the appellant his disclosure of offences which were not otherwise known to the authorities, and gave him credit for that.

In my view it would have been inappropriate for the learned judge to set out to give a specified discount for that particular aspect of the subjective features of the case favourable to the appellant. I do not intend to repeat what I said in *R v Gallagher*. It is sufficient to point out that the present is a case which presents a substantial degree of overlapping between questions of contrition and questions of revelation of otherwise undisclosed wrongdoing.

I am not persuaded that a consideration of the size of the penalties imposed by Nield DCJ indicates that he must have made insufficient

allowance for this aspect of the case; nor do I accept the proposition additionally advanced on behalf of the appellant that the sentences imposed by Nield DCJ were manifestly excessive. Considerations of totality were important in the present case and the detailed fashion in which the individual sentences were structured by Nield DCJ was not a matter upon which anything much turned. When the combined effect of the sentences is considered, and due allowance is made not only for the subjective considerations referred to in the passage quoted above, but also for the circumstance that the sentences were not to commence until the year 2000, nevertheless it seems to me that the sentences imposed in this case were in line with the sentences imposed for similar offences involving similar offenders. I refer in particular in that regard to *R v Ridsdale* (1995) 78 A Crim R 986; *R v AB* CCA, unreported 7 July 1997; *R v Hill* CCA, unreported 7 July 1992; and *R v RWC* CCA, unreported 4 August 1994.

It is, of course, possible, by a close examination of the details of those individual cases, to point to aspects which are different from aspects of the present case. Nevertheless, in my view, upon an examination of the facts and circumstances of those cases, and a comparison of the facts and circumstances of the present case, the sentences imposed in the present case were well in line with the sentences imposed in the earlier cases to which I have referred.

Reference was earlier made to the fact that the conduct of the appellant involved a serious abuse of the position of trust. One of the complaints that is made on behalf of the appellant by senior counsel is that Nield DCJ erred in not giving the appellant credit in the sentencing process for his good works in pursuit of his priestly vocation, and for the good character and reputation which he had established as a result of his

pastoral activities over many years.

In a circumstance where the essence of the criminality of the conduct of an offender is abuse of a position of trust, it is ordinarily not of great assistance to the offender to observe that he occupied a position of trust. The offences committed by the present appellant were only made possible by the trust that was reposed in him in connection with the pursuit of his priestly vocation. I agree with Nield DCJ, that, in the circumstances of the present case, the high reputation previously enjoyed by the appellant in the community, the trust and confidence reposed in him by parents and by church authorities, and the effective performance by him of certain important aspects of his vocation, were not themselves matters which warranted the extension of significant leniency when it came to punishing him for the offences to which he pleaded guilty.

The sentences imposed upon the appellant were severe, but the objective criminality involved in his behaviour was extreme. He was treated justly. He should have leave to appeal against the sentences but the appeal should be dismissed.

COLE JA: I agree.

LEVINE J: I also agree.

GLEESON CJ: The orders of the court will be as I have proposed.

I certify that this and the five preceding pages are a true copy of the reasons for judgement herein of The Honourable The Chief Justice of New South Wales and of the Court.

Susan J Pearson
Associate

Dated 5 March 1998