[2001] QCA 445

COURT OF APPEAL

McMURDO P
DAVIES JA
AMBROSE J

CA No 206 of 2001

THE QUEEN

v.

GEORGE ARTHUR JACKSON Respondent

and

ATTORNEY-GENERAL OF QUEENSLAND Appellant

BRISBANE

..DATE 16/10/2001

JUDGMENT

16102001 D.1 T12/LZG14 M/T COA248/2001

THE PRESIDENT: Judge of Appeal Davies will deliver his reasons first.

DAVIES JA: This is an appeal by the Attorney-General against a sentence imposed on the respondent in the District Court at Ipswich on 13 July this year. The sentence was one of four years imprisonment wholly suspended for an operational period of five years. It was imposed for nine offences of indecent treatment of a girl under 14 years and five of indecent treatment of the same girl under 16 years of age.

The offences occurred between October 1979 and October 1987. At the time the first of them was committed the complainant girl was only eight years of age. She was 15 when the last of them was committed. The appellant during this period was aged between 43 and 54 years of age. He is now 64. The complainant's present age is about 27.

Over the period of time to which I have referred the offences appeared to gradually escalate in seriousness. They commenced by touching the complainant in her genital area, then exposing his penis to the complainant, then touching both in the breast and genital area, then showing the complainant a pornographic movie and, finally, on a number of occasions removing her underpants and licking her in her vaginal area. None of these offences involved penetration of the complainant, simulated intercourse or masturbation to ejaculation.

I do not wish, by anything I have just said, to understate the seriousness or frequency of these offences. However, it is necessary to place them in perspective in relation to other cases of a more invasive or disgusting kind with which courts unfortunately have to deal. I have read the evidence thoroughly with respect to all of the counts and I have taken that into account in what I am about to say.

It is unsurprising that the commission of these offences over such a sustained period has had a considerable psychological effect on the complainant. No doubt that has been exacerbated by the discrepancy in age between her and the respondent and the position of trust in which, as against her, the respondent held. The respondent conducted a Sunday School class at a church which the complainant attended and the relationship between them started from this. It was plainly a relationship in which the complainant felt unable to protest to the respondent or complain about his conduct to others.

The complainant provided to the Court a very moving victim impact statement in which she outlined her feelings of isolation, insecurity and withdrawal. She spoke of her fear and her inability to sleep and, even as an adult, her continuing depression which occasionally made her life unbearable. She has received counselling from time to time over the last decade.

It is most unfortunate that the sentencing judge was not provided with any reports from a psychiatrist or psychologist discussing the causes of and prognosis for her condition. That is not a criticism of the complainant or a reflection of any doubt about her veracity. But it is impossible to be satisfied that the treatment to which she was subjected by the respondent is the sole cause of all her personal problems or as to the prognosis of her present condition without psychiatric or psychological evidence. However, as the prosecution did not provide any such evidence the learned sentencing judge and this court are left to do the best we can on the evidence provided.

As the learned sentencing judge said, this is a most unusual case for a number of reasons. The first and most important of these is the length of time which has elapsed since the last of the offences was committed by the respondent and the rehabilitation which he has undergone during that time.

The last date on which any offences were alleged to have been committed was 2 October 1987. In 1988, when the complainant turned 16, she informed a youth leader in the church, who informed a minister, about the commission of these offences. The minister then attended on the respondent who disclosed his conduct to the minister and also to his own wife. He promised that the conduct would cease.

In 1990 the respondent was referred by the minister to a psychiatrist, Dr Wilkie, and suspended from his church membership. A public statement was made by the minister to the church congregation identifying the respondent as the person who had committed immoral acts upon persons in the church. The respondent signed a statement confirming that these statements were true and agreeing to undertake treatment. These events were reported in the local newspaper.

At the time of making his statement the minister indicated that it was not intended to prevent any person seeking redress for any wrongs committed by the respondent and urged any such person to seek whatever redress he or she wished. Nevertheless, no complaint was made by the complainant to police until 1998. That is not a criticism of the complainant. It is not at all uncommon and it is perfectly understandable that a person in the complainant's position might be reluctant to make a complaint which might in turn result in having to go through these episodes again. This complaint was not proceeded with in compliance with the complainant's wishes, and it appears that it was not until April this year that proceedings against the respondent were commenced.

In the meantime the respondent and his wife had consulted Dr Wilkie in May 1990 and on another seven occasions in that

year. He then, apparently by arrangement between Dr Wilkie and the Reverend George Tully, a Uniting Church prison chaplain who ran a self-help group of sex offenders, commenced attending sessions of this group once a fortnight together with his wife. That has continued until the date of sentencing.

Over that period of 11 years he has apparently responded well. It is unnecessary to detail here his own sexual abuse as a child or his apparently compulsive behaviour patterns. It is sufficient to say that, in the opinion of Dr Wilkie, the respondent has quite different attitudes now from when he joined the self-help group 11 years ago and is unlikely to re-offend; and in the opinion of the Reverend Tully he has taken advantage of the therapeutic and educative value of the group and has progressed a long way towards being a recovering offender. Dr Wilkie thought that he could benefit from further psychotherapy now and further appointments have been made for that.

This is therefore one of those exceptional cases referred to by this Court in R v. Law ex parte Attorney-General [1996] 2 QdR 63 in which the time between commission of the offence and sentence was sufficient to enable the court to see that the offender had become rehabilitated or that the rehabilitation process had made good progress.

The second unusual feature of this case is the extent of the remorse shown by the respondent and his cooperation with the police. As to the latter it appears that three of the counts in the indictment, counts 1, 9 and 11, were charged solely on the basis of admissions made by the respondent. No evidence of these was given by the complainant. This alone indicates a preparedness on the part of the respondent to confess all of his offences whether provable by other means or not. When first confronted by the minister to whom the complaint was made he admitted the offences immediately in circumstances in which he must have known that it may have meant his expulsion from the church. He plainly was and is a deeply religious man and this must have meant a lot to him. His personal statement of confession also reveals the extent of his remorse and his wish to atone for his conduct.

The third unusual feature of this case is the respondent's suspension from the church and the publication within the church community and more widely in his local community of his immoral acts. These resulted in his public disgrace among the people whom he most respected and whose goodwill he most craved. The church is to be commended for what it did and for having done so openly. Its action was exemplary. But it has had a substantial effect on the respondent. To say that is not to express any sympathy for the respondent. Quite the

contrary. But the public disgrace is a substantial burden to the respondent, not one shared by many similar offenders, and is of some relevance therefore when one comes to consider whether the sentence which the learned sentencing judge imposed in this case was manifestly inadequate.

One other matter which should be mentioned in the respondent's favour is the respect in which he was otherwise held in his own community. This is evidenced by numerous testimonials which were tendered on the sentence hearing.

The substantial question before this Court is not whether the sentence which was imposed, that is the actual term of the sentence, was appropriate having regard to the seriousness of the offences which the respondent committed and the effect which they had on the complainant. A sentence of four years imprisonment was not manifestly inadequate for those offences.

The question is rather whether, having regard to the unusual factors which I have mentioned, and in particular the apparent progress in the rehabilitation of the respondent over the period of approximately 11 years between the commission of the last of these offences and the date on which he was charged, the suspension of that sentence of imprisonment in its entirety made it, on the whole manifestly inadequate.

I cannot be satisfied that it did. Unlike many cases of this kind in which opinions are expressed on the unlikelihood of an offender not offending again, those who have expressed the opinion in this case have had the opportunity of observing the respondent dealing with his criminal predisposition over a substantial period of time and of adequately assessing his capacity to overcome it.

Moreover, the cases referred to this Court by Mr Rafter on behalf of the respondent, in particular the case of Solway (CA No 187 of 1995, 22 August 1995), and R v. T; ex parte Attorney-General [2000] QCA 282; CA No 113 of 2000, 21 July 2000, support the submissions which Mr Rafter made that the sentence, in this case, looked as a whole was not manifestly inadequate.

For those reasons I would dismiss the appeal.

THE PRESIDENT: I agree.

AMBROSE J: I agree. I agree that the circumstances which my brother Davies has outlined do constitute exceptional circumstances which in the present case justified the fully suspended sentence. It would not normally be the case, in my view, that this type of offending would not attract a custodial sentence but the circumstances of this case in my

view are exceptional and therefore I would decline to interfere with the sentence imposed as being manifestly inadequate.

THE PRESIDENT: The order is the appeal is dismissed.
