



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

SUBMISSION TO THE DIRECTOR

28 October 1996

SUBJECT: Question of the Commencement of Indictable Proceedings against X17 following Allegations of Sexual Assault by

FT

Recommendation by B.R. Love, Lawyer, Group 3 that proceedings not be commenced.

Cases reference 9620012

By letter dated 1 October 1996, Detective Senior Constable A.M. McLEAN of the Child Protection and Investigation Team, South Region Major Crime Squad, seeks advice as to whether given the circumstances detailed below, the commencement of indictable proceedings against Mr. X17 is warranted.

BACKGROUND

As a result of one aspect of the Royal Commission into the New South Wales Police Service, Det. Sen. Const. McLEAN and others commenced an investigation into a number of former members of the Salvation Army associated with the Bexley Boys Home and Gill Memorial Home for Boys at Goulburn during the 1960s and 1970s. Following allegations by FT and EP, Lawrence Allan WILSON has been charged with numerous offences including buggery and indecent assault – Cases reference 9618747, listed for mention to fix committal hearing date at Sutherland Local Court on 31 October 1996.

In relation to X17 FT is the only former inmate to make allegations of a gross criminal nature and they are set out in paragraphs 13–14 of his statement hereunder. The alleged offences occurred from 1972 until about 1973. Police have confirmed that X17 was working at Goulburn during that period.

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SPECIAL FEATURES:

On 27 September 1996, Det. Sen. Const. McLEAN was contacted by Mr. Stewart COLE, Solicitor, who stated that he acted for Mr. X17. He said that his client was aware of an ongoing police investigation but that his client was in a poor state of health. A doctor's report was duly faxed to police (copy attached). In view of X17's current declining state of health, X17 was not prepared to be interviewed in any way by police in relation to the allegation made by EP.

A further factor is the vacillation of Mr. EP. I have spoken to him on a number of occasions in relation to the prosecution of WILSON. He is presently receiving psychiatric counselling for problems he says relate directly to his treatment at Bexley and Goulburn and he freely says that he should not be the only one who should 'pay' for what happened in those days. On the second occasion he contacted me, it was to inform this office that he wanted nothing more to do with any prosecution and any further contact with police. Apparently this arose from a domestic dispute between he and his girlfriend to which the police were called and in which they intervened. He was charged by them as a result - hence the hostility. I next spoke to him on Wednesday 23 October and he has now returned to active co-operation! In relation to the WILSON matters, he requested that he be handcuffed to police when giving his evidence at committal (section 48EA not being applicable to these matters) for fear of causing physical injury to the defendant when they again meet. He will be an interesting witness! Detective McLEAN has discussed X17's medical condition with him and I have also canvassed his attitude to the prosecution of X17. Not surprisingly perhaps, he does not have a great deal of sympathy for X17's plight viewing this 'death sentence', as he terms it, as a form of richly deserved retribution. Nevertheless he said that he could understand that given the circumstances, the Director of Public Prosecutions may advise that the commencement of indictable proceedings is not warranted.

In the present matter, I am of the view that the age and physical health of the alleged offender mitigate against the commencement of a prosecution. It may be that before a final decision is made, a further report or reports (as is thought appropriate) should be required from the treating doctor or others - but it would seem a remote prospect that Mr. X17 will regain any measure of reasonable health.

RECOMMENDATION

That Detective Senior Constable McLEAN be advised that having regard to the special circumstances of this matter, indictable proceedings (based on the allegation of EP EP) be not commenced against X17.

REDACTED

~~B R Love
Solicitor
Group 3
x 58630~~

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