

**Settled by His Honour Judge Anderson - 12/9/03 - and Internet Version**

IN THE DISTRICT COURT

CRIMINAL JURISDICTION

ADELAIDE

FRIDAY, 12 SEPTEMBER 2003 AT 9.35 A.M.

BEFORE HIS HONOUR JUDGE ANDERSON

NO.1013/2002

R v BRIAN BERTRAM MORRIS PERKINS

HIS HONOUR IN SENTENCING SAID:

Brian Bertram Morris Perkins, you have pleaded guilty to two counts of causing or inducing a child to expose his body, two counts of indecent assault and one count of inciting or procuring a child to do an indecent act. Those pleas were entered on the day upon which the matter was listed for trial, thus you are entitled to some discount to the sentence to be imposed because of them. The discount will be less than had the pleas been entered before the matter was prepared for trial.

Because of those pleas it has not been necessary for any victim to give evidence. As the victim A suffers from an intellectual disability, you have saved him from a significant emotional experience, and that is to your credit and is to be reflected in the sentence.

The maximum penalty for the offence of causing or inducing a child to expose his body is a term of imprisonment not exceeding two years. That for the offence of indecent assault is imprisonment for a period not exceeding eight years in relation to count 3, and 10 years for count 6 as the victim was there

under the age of 12 at the time. That for the remaining offence, which is count 5, is also imprisonment for a period not exceeding two years.

These offences were committed between January 1987 and late August 1991. That was the period for which you were employed as a casual bus driver for St Ann's Special School. In addition, you also assisted with woodwork and as a handyman.

Because the school was for children with a disability the school community was closer than might otherwise have been so.

Your bus driving duties required that you pick up children from their homes each morning and return them at day's end. Because of this you came to know their parents and carers and also became closer to the children. You were a person who was trusted by the school staff, the students and their parents and carers as a consequence of the manner in which you performed your duties as bus driver, in the woodwork room and as a handyman around the school.

Your paid duties related only to the bus driving, otherwise you volunteered your time at the school.

Over time you developed the trust and confidence of the students and their parents and carers to the extent that some of them were quite prepared to allow you to take their children home for the weekend on the pretext that both parents and children may have some respite. This activity occurred with the knowledge and consent of the school and is indicative of the trusting relationship and regard you had built up towards yourself from all involved.

Counts 1, 2 and 3 involve the intellectually disabled boy A who was aged between 11 and 15 when these offences occurred.

The abuse of A is to be considered against a background course of conduct between him and you wherein masturbation occurred on the school bus, in the woodwork room and at your home. This course of conduct has the effect of reducing the scope for leniency.

Counts 1 and 2 involved you taking photographs of A lying naked on a rug and sitting naked on a chair in the backyard of your then residence.

Count 3 relates to an indecent assault upon A by you when your penis was tied to his. This offence is aggravated in that it took place in the home of another man who was present but who has since died.

Count 5 involved A and another boy, B, who was born with Down's syndrome. He was also a student at St Ann's and you became friendly with and trusted by his parents before also offering to care for B on weekends. Because of his disability B is not able to speak of these events. The photographs which I have seen show A and B together naked in the yard of your then residence.

Count 6 involves a younger boy, C. He was born with Down's syndrome in August 1979, so was under the age of 12 when this offence was committed.

A videotape seized by the investigating police shows C naked with his hands tied behind his back with rope and the rope then wound around his upper thigh in the vicinity of his genital area. When the video was taken C had an erect penis.

This offence was aggravated because another man, also naked, is seen on the videotape with a camera taking photographs of C. You are identified from a voice recording as being present and likely holding the video camera.

As a consequence of information received, the police visited your home in 1991 and seized rolls of film. When developed, these showed photographs of A and his brother, who is now deceased.

When the police returned to the home, having developed this film, you had vacated it.

More rolls of film and the videotape were discovered in your caravan in 1993. They were developed and show A and B and C. You were arrested. You subsequently failed to answer your bail.

In March 2002 you were extradited from Queensland to answer these charges and have remained in custody since that time.

I have read the victim impact statements provided by, and in relation to, A and the parents of B and the carer of C. They all indicate the trauma which these young men and their parents and carers underwent because of their experiences in these matters. C is still behaving in a manner which reflects his experience, even though it is now more than seven years ago. Perhaps what is set out in those statements is best encapsulated in the words from one of A's carers. She wrote, 'Of course the sadness will never go away'.

I have had regard to the psychological and medical reports tendered on your behalf. I note that you were one of many children of a poor family. Your

education was shortened. You suffered physical abuse at the hands of your stepmother and sexual abuse at the Magill Reformatory and at a Torrens Road church-based school.

You married twice but have lived alone now for many years. Mostly you have been in employment as a driver. You retired in 1985 because of poor health.

It seems that it was subsequent to so doing that you came into contact with H who is a convicted paedophile. It was in his company that you began to seek the company of children and then, with others, came to the stage where this offending occurred.

Your antecedent history indicates convictions in 1969 and 1974 for carnal knowledge. The psychological diagnosis in light of this is that you meet the criteria for paedophilia as you have a history of sexual behaviour with children. Your history of childhood sexual abuse is also here relevant. You exhibit no other relevant psychopathy.

It is of the utmost importance that general and personal deterrence is active in the sentencing process. This is so even though you have now insight into your behaviour and are motivated to participate in a sexual offenders program. You remain a risk to children notwithstanding your generally poor health.

General deterrence is an important part of the sentencing regime because of the criminality of such behaviour directed specifically, as it was, towards duping the school, the parents and carers of the children and then offending against the children themselves.

It is difficult to conceive of a greater breach of the trust which was bestowed upon you in relation to the care of these boys.

The sense of outrage felt in the community by such behaviour is to be met with a sentence of imprisonment.

Whilst these offences occurred at separate times between January 1987 and August 1991, they, together with the other behaviour to which I have referred, are really part of one course of conduct and it is appropriate that I impose one sentence of imprisonment in respect of it pursuant to s.18A of the Criminal Law (Sentencing) Act. It is not appropriate to seek to calculate the sentence in a mathematical way.

Were it not for your late pleas of guilty I would have imposed a sentence of 12 years imprisonment. I allow a discount of about 10 per cent to reflect those pleas and the fact that a disabled boy was not required to undergo the personal trauma of reliving these events in the witness box so many years on. This discount is about equally divided between these considerations.

The sentence of imprisonment is therefore reduced to and fixed at 10 years and six months.

I decline the invitation to further mitigate this sentence by virtue of your ill health.

Whilst Dr McCleave has set out your present illnesses and his opinion of the effect of imprisonment upon you, it is obvious from the report of Dr Geddes, of the Prison Health Service, notwithstanding what he describes as your 'multiple

serious medical problems', that you are able to be properly cared for in prison and have been so since March 2002. I also note an earlier report from that service which describes you as having 'a relatively low profile in our system'. Thus, I am not of the view that imprisonment will be a greater burden on you by reason of your state of health.

It is also not appropriate to further reduce this period of imprisonment because of the principle of totality or because of your age. In all of the circumstances I do not consider this head sentence to be so large as to be said to be too much.

The offences are serious and warrant significant punishment within the permitted range, irrespective of considerations of age. I would not in any event further reduce the appropriate head sentence because of your age.

The delay between when these offences occurred and now is of no relevance as you have brought it upon yourself by leaving your home in 1991 and breaching your bail in 1993. That you have not further offended in that period is of no real consequence in such circumstances.

I set a non-parole period of six years to commence with effect on 28 March 2002, which is the day on which you were taken into custody. It is not appropriate to suspend the sentence. I impose the levy in the sum of \$600.

ADJOURNED 9.47 A.M.