

27032002 blp (Howell DCJ)

DISTRICT COURT
CRIMINAL JURISDICTION
JUDGE HOWELL

Indictment No 568 of 2002

THE QUEEN

v.

JOHN LITTON ELLIOT

BRISBANE

..DATE 27/03/2002

SENTENCE

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HIS HONOUR: You have pleaded guilty to ten counts of sodomy with a male under 18 and to 18 counts of indecently dealing with boys under 14. All 28 counts occurred in a period of about three years, generally speaking, from about 1970 to 1973.

Matters of concern include the age of the boys. They were aged, generally speaking, from about ten to thirteen at the time. The legislation at the time did not permit a circumstance of aggravation in relation to a position of trust, namely, that they were under your care for the time being, but a matter of concern is that you were in a position of very real trust and you abused that position of trust seriously badly indeed.

You had a prominent position in a bank at the time in the provincial city. You voluntarily actively became involved in church groups, including, in effect, setting up what might be called the Church of England Boys' Brigade. The boys attracted thereto were, generally speaking, in the age group ten to thirteen, as mentioned. The stated aim of the group was to foster the mental, spiritual, social, and physical well-being of the boys.

The complainants in this case fell into a very obvious vulnerable category. All had no father figure in that their father was deceased or there had been a marriage breakdown and there was no adult male in the household. These people were not only entrusted to your care but, because of their

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particular vulnerability, would have looked to you for guidance. One might think that you were almost in loco parentis in the circumstances appertaining thereto.

Crown counsel has, aptly and adequately, described your behaviour as gradually breaking down the morals of the boys concerned followed by further, more serious corrupting behaviour, and submitting that you were selective in relation to the targets that you picked.

The breach of the position of trust, although not a formal circumstance of aggravation, is of obvious real concern. I have mentioned the age of the boys and there was the number of them, namely five. The acts themselves included acts at the more serious end. There are ten counts of sodomy with the first complainant, and there are acts such as fellatio with others. I do not propose to go into all the acts concerned.

The victim impact statements, unsurprisingly, show mental, psychological, and emotional after-effects of some seriousness. One has to read the victim impact statements in full to get the full impact thereof. One is somewhat guarded, of course, and adopts a conservative approach in any use that may be made of victim impact statements in the sentencing process. The Court of Appeal made it clear in *Francois*, CA 1/86, wherein Macrossan J said:

"There is in all such cases, no doubt, some

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potential for mental, emotional, and psychological harm, and Courts may take such into account for the purpose of sentencing."

Here the victim impact statements give substance to such a suggestion.

To state the obvious, in this offence the deterrent element is more than ordinarily important. As the Court of Appeal stated in Row Row, CA 119/80, the legislation is there

"for the protection of the innocent, ... the protection of children at a vulnerable stage of their development, sometimes against themselves".

To say that this offence is proliferating in all circuits in which I sit regularly is to understate the matter. There clearly has to be a substantial head sentence.

In relation to matters for which allowance should be made, there has been close to maximum cooperation in the administration of justice. You made statements adverse to interest to the police, although I gather that you did not admit your involvement in certain of the more serious acts at that stage.

At the committal proceedings no complainant had to relive these matters in a public forum, and, most importantly, further, they did not have to relive these matters in a public forum at all by virtue of your plea of guilty here.

Although the victim impact statements may contain material adverse to you in detailing the emotional and psychological

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after-effects on them, to read those statements one forms the very clear conclusion that it would have been a very

unpleasant experience indeed for any of the four complainants whose victim impact statements appear in Exhibit 2 to give evidence. Courts must not pay mere lip service to the cooperation in the administration of justice preventing such witnesses from having to give evidence.

The delay from the last act until today is nearly 29 years. The Court of Appeal says that delay for which the accused is not responsible does not act in mitigation of a penalty, but does say where there is a substantial period great assistance can be received in relation to the matter of rehabilitation. The material before me shows that in the 29 years since you have not reoffended. On the material placed before me, you have provided good and useful service to the community in the interim such that allowance is appropriate therefor.

The fact that you have no previous convictions is not all so surprising in a charge of this nature. As I have said on many occasions, these offences are committed ever so often by people of previous good character, even exemplary character.

You are now aged 69. If you had been sentenced in the mid '70s for this offence you would not have served the time as hard as you will now, commencing a substantial gaol term at

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age 69.

On counts 6, 7, 8, 10, 13, 16, 17, 18, 19, and 20, you are sentenced to imprisonment for seven and a half years.

I recommend that you be eligible to apply for a post-prison community-based release order after 30 months.

For tidiness, on the remaining 18 counts you are sentenced to 30 months' imprisonment.

I strongly recommend that a place be found for you as soon as is reasonably practicable at the Sexual Offenders Unit at the Moreton Correctional Centre.

Crown counsel having indicated it will no longer proceed in relation to counts 22 and 23, the accused is discharged in relation to those counts.

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