

DISTRICT COURT

CRIMINAL JURISDICTION

JUDGE HOWELL

Ex Officio Indictment

THE QUEEN

v.

JOHN LITTON ELLIOT

BRISBANE

..DATE 14/02/2003

SENTENCE

HIS HONOUR: Would you stand, please. This is a sentence not without its difficulties. On the 26th of March 2002 I sentenced you on your plea of guilty on 10 counts of sodomy with a male under 18 and to 18 counts of indecently dealing with boys under 14. There was a great delay in bringing the matters before the Court. All those matters were about up about 30 years ago.

Today you have pleaded guilty to indecently dealing with two boys who were under the age of 14. Such matters, again, occurred a long time ago, all such acts being over 20 years ago. The maximum penalty for each of the eight counts before me today is five years' imprisonment.

I repeat and rely on certain of the remarks I made on the 27th of March 2002:

"Matters of concern include the age of the boys. They were aged, generally speaking, from about ten to thirteen at the time ... 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 ... The victim impact statements, unsurprisingly, show mental, psychological and emotional after-effects of some seriousness ... 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, 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

...

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. ... 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."

In this particular case, the two complainants understandably have not provided victim impact statements, but it would be surprising indeed if there was not some perhaps not insubstantial mental, psychological and emotional after-effect.

There is no count of sodomy in the matters before me. A good couple of months before you were sentenced on those charges you informed the police of your unlawful activities with the first complainant, BYB [REDACTED]. Statements were obtained from BYB [REDACTED] and ultimately from the complainant [REDACTED].

With the substantial delay in those matters coming before the Court, one can only ask why appropriate arrangements were not made for all these matters to be heard at the one time.

When I was sentencing you on the 26th of March 2002 the most serious offences I was concerned with were the sodomy offences. There are no sodomy offences before me today.

For all the indecent dealing offences before me then I imposed a sentence of two and a half years' imprisonment. In relation to the indecent dealing offences then and now, there are very many similarities: age, act, position of trust and suchlike.

This is an ex officio indictment and Courts must not pay mere lip-service to an allowance for cooperation in the administration of justice. As I have said on many occasions, this is the classic case in which there should be meaningful allowance for cooperation in the administration of justice by virtue of an ex officio indictment because that means that the most vulnerable of complainant, the complainant in an indecent dealing case, does not have to relive the matters in a public forum at all and such complainant does not even have to have at the back of the mind, "I might have to go to Court.", or, as often happens, actually go to Court and find out that it is a hand-up committal. The complainants before me today have not had to relive the matter in a public forum at all. One takes into account your age.

In relation to delay, as I said, the evidence shows positive evidence of rehabilitation indeed. The community might be a little annoyed that the authorities have not made the rehabilitation course of the sexual offenders unit available to you yet. I am aware that a substantial number of such offenders are in denial and refuse to take such a course. Here you have readily admitted that you have done wrong and you have actively sought to enter the course.

It is 11 months since I sentenced you. You are eligible to apply for parole at this stage as at the 27th of September next year. So, as I said, the community would have hoped that you would have been able to have started the course by now.

In structuring the sentence, this is clearly an appropriate situation in which I consider the totality principle and consider the sentence that I would arguably have imposed if I had been dealing with all the matters at the one time on the 26th of March last year. I can confidently say that the actual sentence for each of the indecent dealings I would have imposed would have been two and a half years and the global head sentence would have been increased marginally and there would have been a slightly later date for eligibility to apply for parole. The end effect of the order I will be making today will be that your parole eligibility application date will be delayed by three months.

On each charge, you are sentenced to imprisonment for two and a half years. I make a global recommended parole application eligibility date of 27th of December 2004. That is, three months later than your current earliest parole application eligibility date.

I will yet again recommend strongly that a place be found for the accused in the sexual offenders unit and I would strongly recommend that he commence any appropriate rehabilitation course as soon as possible.

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