

Revised

IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

JUDGE BERMAN SC

NEWCASTLE: THURSDAY 31 JANUARY 2013

2011/132578 - Steven Andrew LARKINS v R
2011/280597 - Steven Andrew LARKINS v R

JUDGMENT

HIS HONOUR: Steven Andrew Larkins was the Chief Executive Officer of the Hunter Aboriginal Children's Services. That organisation provided high quality cultural care and support for aboriginal and Torres Strait Islander children, young people and their families. It appears that the appellant was effective and hard working and that many people benefited from his work. He is entitled to be proud of the things he achieved for people less fortunate than himself.

But there is another side to Mr Larkins' activities. They concern two distinct areas: Dishonesty and child pornography.

The offender was charged with a number of offences and dealt with in the Local Court. Some of those are the subject of appeal to this court. Prison sentences were imposed and he appeals to this court against what he asserts is the severity of those sentences.

Let me start with the dishonesty offences. In order to get his job, the offender forged and then used a document. There was something on his criminal history that he was concerned about and so he produced a clearance document which falsely stated that he had been screened and found suitable for a position involving unsupervised child care.

Traditionally, the offence of forgery involving the creation of false documents and then using them is regarded as a most serious offence. The

offender continued in a similar vein later on in order to keep the job he had obtained. He made a false statement in a statutory declaration, that is a Commonwealth offence for which he received a partially suspended sentence and then forged another document, purporting to be a letter from a Mr Mark Zeniol.

These acts of dishonesty were performed by the appellant so that he could obtain and maintain his employment.

As I began this judgment, there is no suggestion that he did not do his job well but that does not alter the fact that he obtained his position through fraud and kept it in the same way. That is a serious offence and serious misconduct, particularly in the case of a person who should have provided a good example to others.

The other issue, as I mentioned, concerns the offender's possession of child pornographic material and that, in turn, can be divided into two areas. The first concerns three offences involving disgusting cartoons based on some characters from 'The Simpsons' cartoon show. At one stage there was some doubt as to whether such material even qualified as child pornography but a judgment of the Supreme Court held that, given the ages of Bart and Lisa Simpson, the cartoon showing them involved in sexual activity would be child pornography.

But what distinguishes those offences from the much more serious offence I am about to get to is that in the production of the cartoons no child was harmed. That is not the case concerning the remaining offence the subject of these proceedings. It is the most serious of the offences presently before the court.

In March 2011 the offender lost a thumb drive or USB stick. He asked

someone to keep an eye out for it. It was found in April. An employee of the Hunter Aboriginal Children's Services was driving a work vehicle and took possession of the thumb drive which was sitting on the front passenger's seat.

Inspection of the thumb drive in an effort to identify who owned it, and so who it should be returned to, revealed documents personal to the offender and a large number of videos showing child pornography. The very titles of the files indicate the nature of the videos, including references to the ages or purported ages of the children involved.

Police were contacted and they went to the offender's premises. The thumb drive was then further examined and 40 child pornographic videos were discovered. Some of them involved penetrative sex between boys of between the ages of ten to fourteen and most of the videos involved more than one child. Thus, there are a large number of children involved in the production of these videos. That means that there are a large number of children who have been harmed in the production of material which the appellant possessed.

It is such harm that makes offences of possessing child pornography, at least those not involving The Simpsons characters, of such seriousness. There is a demand, it appears, for videos of this kind and there are people in this world who are prepared to satisfy that demand by getting children to engage in sexual acts. By participating as he has the appellant has encouraged the production of material of this kind and thus encouraged further harm to other children in the future.

The seriousness of child pornography offences extends to other areas as well. Normalising the idea that children should be involved in sexual activity is harmful in itself. It is for these reasons that possession of child pornography is treated as seriously as it is.

The offender is entitled, as I mentioned, to rely on the good work that he has done and his otherwise good character. He will do his time in custody harder than others and he has suffered significantly already through the loss of his employment and the shame that he is now experiencing. But it is a fundamental rule of sentencing that a sentence needs to reflect the objective gravity of what an offender did.

The offender possessed a significant number of videos showing children performing sexual activity in circumstances where he must have known that each of those children was harmed in the production of that material. For that reason, a custodial sentence is required.

Mr Booth submitted that if there was a sentence of imprisonment necessary it should be suspended. I do not agree. It cannot be ignored that the effect of a suspended sentence is often no punishment by the justice system at all. A person who receives a suspended sentence of imprisonment and who does not breach the bond receives little punishment.

Of course, suspended sentences are appropriate in some cases but it must be remembered that that lack of punishment means that suspended sentences have little deterrent effect and general deterrence must be a prime component of any sentence imposed for offences of this kind.

The magistrate imposed identical sentences for all offences of possessing child pornography. To put matters bluntly, the appellant received the same sentence for possessing on his I-phone cartoons showing Bart and Lisa having sex as he did for possessing on that thumb drive videos showing a number of real children having sex. In my view, the sentences for the first three offences of possessing child pornography, those relating to The Simpsons characters, were excessive. I will return to the appropriate order in

a little while.

As far as the fraud offences are concerned, I am satisfied that the sentences for those matters were appropriate. The effective punishment for all of those put together is imprisonment for ten months with the child pornography sentences commencing ten months after the commencement of the fraud offences.

It is, as I said earlier, a serious matter, to forge a document and then use it to gain a financial advantage, even where the job which is obtained through the fraudulent conduct is done well. I am satisfied that the sentences imposed by the magistrate for the dishonesty offences were appropriate.

I am satisfied also that the head sentence for the offence involving a thumb drive was appropriate, if not a bit lenient but what may well have been overlooked as these sentences were accumulated is the effect of the ratio for non-parole period to head sentence. As matters stand, the overall sentence of twenty-two months with a non-parole period of nineteen months results in a ratio of non-parole period to head sentence of 86 per cent.

I can see no good reason why the ratio should not be more in the appellant's favour and indeed I am prepared to make a finding of special circumstances in his favour. This will be the offender's first time imprisonment and he has commenced treatment in an effort to rehabilitate his attitude towards child pornography. Allowing an extended period of supervision on parole will promote his rehabilitation, which will make it less likely that he will commit offences in the future and which, in turn, makes it less likely that other people will be harmed.

So, the finding of special circumstances is not made as a favour to the offender but as a means of best promoting the protection of the community.

RSB:SND

335/13

For those reasons, I make the following orders:

For the offences of possessing child pornography relating to The Simpsons material, the sentences of imprisonment are quashed and instead the offender is placed on a bond to be of good behaviour under section 9 of the **Crimes (Sentencing Procedure) Act** for a period of two years. The conditions of that bond are that he is to be of good behaviour and is to appear before this court if called upon to do so at any time and he is to advise the registrar of this court of any change of residential address.

For the two offences of making a false document to obtain a financial advantage, the offence of using a false document to obtain a financial advantage and the offence of intentionally making a false statement, a statutory declaration, the sentences of imprisonment are confirmed.

Those sentences will commence on today, 31 January 2013.

For the offence of possessing child pornography relating to the thumb drive, the offender is sentenced to imprisonment. I set a non-parole period of five months with a head sentence of twelve months to commence on 30 November 2013.

It is my intention, Mr Booth and Mr Crown, to preserve the ten month gap or the overlap. I think that is right, is it not? So, I think, Mr Larkins' effective non-parole period expires on 30 April 2014.

BOOTH: I need a moment or two.

HIS HONOUR: If there is any mistake about that, let me know.

If upon returning to your chambers you discover there is some mathematical error or an error in dates, then let me know.

BOOTH: Thank you.