



Transcript of Proceedings

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DISTRICT COURT
CRIMINAL JURISDICTION
JUDGE MCGILL SC
THE QUEEN
v.

BUNDABERG

.. DATE

SENTENCE

REVISED

QCPCI

Date: 23.10.2012

Exhibit number: 91

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

~~REDACTED~~
HIS HONOUR: ... , you are to be sentenced for
one count of indecent treatment of a child under 12 who is a
lineal descendant and under your care. You pleaded guilty to
this charge when arraigned before me today.

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There was an indictment presented some time ago alleging this
and other charges. There have been various interlocutory
steps taken in relation to the indictment as a whole, but
significantly there has not been an prerecording of the
complainant's evidence and of course as a result of your plea
and the course taken by the Crown Prosecutor in accepting the
plea in discharge of the indictment, that will no longer be
necessary and that is a relevant factor.

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The circumstances of this particular offence are certainly in
my experience, exceptional. The complainant was your son who
was seven years of age at the time and was at the time of the
charge on the 13th of December 2008, in your care except to
the extent that you left him in day care as you did regularly
and had done for some time.

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On that day when you went to collect him from day care, you
were sitting talking to one or two other people there. Your
son came to sit in your lap and put his hand down the top of
your blouse and apparently inside your bra and was touching
your breast. This continued for some minutes. I was told
that the estimate was up to 20 minutes, and that strikes me as
a very long time and I wonder whether the estimate was
reliable. It does not-----

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DEFENDANT: But I can say something, sorry-----

HIS HONOUR: No, I'm not accepting that's a reliable estimate.

DEFENDANT: Okay, sorry.

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HIS HONOUR: It was not suggested that anything you had done at that time induced or encouraged him to do that and the offence is based on the proposition that when he did that, you did not take any steps to discourage him from doing that. As I say, up until that time the child had been in your care. Subsequently the matter was reported to the Department of Child Safety and the child was taken out of your care and indeed is still out of your care, although you now have regular access to him.

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I was also told that the continuation of these proceedings have been distressing to the child who is now 10 and that that will be eased by the proceedings being brought to an end in this way.

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As I say, the child was seven at the time and is your natural child. It's quite unlike any other facts involving an offence of this nature that I've ever come across and indeed it occurs to me that perhaps in the past such conduct would not have been regarded as being indecent at all. It appears that you didn't regard it as being indecent at the time, but by your plea you accept that it was conduct which had become inappropriate in accordance with community standards. There is, however, no element of sexual predation or exploitation

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[REDACTED]

involved in the offending.

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When spoken to by investigating police, you agreed to be interviewed but initially made no admissions. As I say, there has been some co-operation in the course of the proceedings in relation to avoiding any prerecording of the child's evidence and so to that extent there has been co-operation and I'll take that into account.

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With regard to your personal circumstances, you are now 47, you were 44 at the time of the offending. You are in responsible employment in Bundaberg. You were single and not in a relationship at the time but you are, I'm told, now in a relationship. You have no criminal history and that is a significant factor.

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You have suffered adverse consequences as a result of this offending in the sense that your son was taken into care by the department and for a long time you were not allowed unsupervised access to him. This was very distressing to you as was to be expected in the circumstances and there was evidence I heard yesterday in the course of a 590AA proceeding to indicate the confirmed existence of that distress and I think that was an adverse consequence of the offending, apart from any sentence that I impose.

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There is also indication of rehabilitation because you have been attending counselling and you have at least been able to demonstrate sufficient rehabilitation so that the Department

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[REDACTED]

of Child Safety has taken the view consistently with its obligations in relation to the safety of the complainant child, you can now be allowed unsupervised, indeed overnight access to the child and they are hoping, or indeed you're all hoping, that in the not too far distant future the child can be returned to you. And that is encouraging and it suggests that the rehabilitation process is well advanced and that I think, is also a significant feature.

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It is a very unusual case and there are significant mitigating factors and I'll take into account in your favour your plea of guilty. I am conscious of the requirements of section 9 of the Penalties and Sentences Act, including in particular the requirements of subsection 5 and 6 and I think that the particular facts of this case are exceptional, as I have said, and that bearing in mind all of the relevant factors including all of the relevant mitigating factors, there are exceptional circumstances so that you are not required to serve an actual term of imprisonment.

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It appears that to the extent that the child has been affected by the offending, it has been the indirect effect to the child of the consequences of being separated from you rather than the actual offending itself.

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I've referred to the age of the complainant at the time. There was no suggestion of any physical harm and there was of course no threat of physical harm to the child and I consider that in the circumstances there is little or no risk of re-

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offending on your part for the reasons that I have outlined.

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I accept given in the nature of the offending, that general deterrence is always a matter of importance, and there are not merely good indications of prospects of rehabilitation but indications that the rehabilitation is already well advanced. Apart from that, I do not consider that there is anything else relevant about the safety of children under 16 in this case, except that there is not the slightest reason to think that you would pose any risk to the safety of any other children.

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In the circumstances therefore, I propose subject to your agreement, to order that you be placed on probation for a period of 18 months. Now the requirements of a probation order are that you do not commit a further offence during the period of the order; that you must report to an authorised Corrective Services officer at Bundaberg by 5 p.m. tomorrow; you must report to and receive visits from an authorised Corrective Services officer at least twice in each week the order is in force; you must take part in counselling and satisfactorily attend other programmes as directed by the Court or an authorised Corrective Services officer during the period of the order; you must notify an authorised Corrective Services officer of every change of your place of residence or employment within two business days after the change happens; you must not leave or stay out of Queensland without the permission of an authorised Corrective Services officer and you must comply with every reasonable direction of an authorised Corrective Services officer.

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I propose in addition to make it a condition of the probation that you receive such counselling or medical, including psychiatric or psychological, treatment or assessment as may reasonably be required by the Department of Child Safety.

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If you fail to comply with those requirements, you will commit an offence under the Penalties and Sentences Act and in addition, you could be brought back before the Court and be resentenced for the offence to which you've pleaded guilty today. The order may be amended or revoked on application by you, an authorised Corrective Services officer or the Director of Public Prosecutions.

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Now do you understand the requirements of the probation order as I've outlined them?

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DEFENDANT: Yes, your Honour.

HIS HONOUR: And are you agreeable to my making that order in your case?

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DEFENDANT: Yes, your Honour.

HIS HONOUR: Yes, all right. In view of the exceptional nature of the facts in this case and matters to which I have referred and your otherwise good antecedents, I will not record a conviction. I recognise that that is a very unusual course for an offence of this nature but this is a very

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unusual example of such an offence.

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In relation to count 2, you are convicted but a conviction is not recorded. You are released under the supervision of an authorised Corrective Services officer for a period of 18 months and you must comply with the requirements referred to earlier. On counts 1 and 3 to 5, you are discharged.

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MR FONG: Your Honour, only one clause that you had in the probation order was that you ordered that it be mandatory that there be two visits by a probation officer per week.

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HIS HONOUR: Did I? Yes, I've realised at that point that I was actually reading from the wrong section. That's not the case and that particular clause isn't a requirement. She has to attend when required by the probation officer for the visits as I recall, but I found myself inadvertently reading the requirements in an intensive correction order, the introductory requirements of which are the same as the requirements of a probation order. But if I actually said that she had to report to and receive visits from an authorised Corrective Services officer at least twice in each week, that's not the case.

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She has to report to and receive visits from an authorised Corrective Services officer as directed by the officer. Well, I suppose if she's willing to consent to the latter, she'll consent to the former.

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MR FONG: That's so.

HIS HONOUR: So I'll treat that as being effective. All right, thank you for drawing that to my attention, Mr Fong.

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