(F)SUMMARY OF SENTENCE ON THIS INDICTMENT - if applicable

If more than one offence summarise the total effective sentence. Do not record the individual sentences.

~ Accused sentenced as a CHILD

✓ Accused sentenced as an ADULT

✓ A CONVICTION was RECORDED

~ A CONVICTION was NOT RECORDED

IMPRISONMENT ORDERED

~ IMPRISONMENT / DETENTION ORDERED

CHILD

~ Child detained for _____ years _____ mths

~ Order for Release of Child after serving _____% of detention

~ Immediate Release Order re child

ADULT

~ Life imprisonment

✓ Adult imprisoned for _____ yrs 12 mths

✓ Adult imprisonment totally suspended

~ Adult imprisonment partially suspended after serving _____ yrs _____ mths

✓ Operational period of (adult) suspended imprisonment 2 yrs _____ mths

~ Recommendation for parole after having served _____ yrs _____ mths

SPECIAL ORDERS RE IMPRISONMENT

~ Declaration of serious violent offence ~ Intensive correction order made ~ Indefinite sentence imposed

~ Imprisonment was ordered to be cumulative upon_____

~ PRE-SENTENCE CUSTODY DECLARED_____DAYS

NON CUSTODIAL ORDER

~ INTERMEDIATE ORDER

~ Probation for _____ yrs _____ mths

~ Community Service _____ hours

~ Probation for _____ yrs _____ mths and Imprisonment for_____mths

~ DISCHARGE/RELEASE / GOOD BEHAVIOUR ORDER

~ (Adult)Discharge/ Release absolutely

~ (Adult) Release on recognisance for _____ yrs _____ mths

~ (Child) Reprimand

~ (Child) Good Behaviour Order for _____ yrs _____ mths

~ Amount of recognisance $

~ FINE

~ Fine in the amount of $_____ ~ Default period_____

~ Fine Option Order made ~ Time to pay_____

~ SENTENCED TO RISING OF THE COURT

~ COMMUNITYCONFERENCE ORDERED

ORDER MADE UPON BREACH PROCEEDINGS

~ ORDER FOR SUSPENDED ORDER

BREACH OF IMPRISONMENT

~ Operational period extended by:_____

~ Offender ordered to serve whole period of suspended sentence:_____(period)

~ Offender ordered to serve part of the period of suspended sentence_____(period) of_____(total period)

~ ORDER MADE FOR BREACH OF COMMUNITY BASED ORDER

Type of order breached:~ Probation ~ Community Service ~ Intensive Correction

Offender ~ Admonished and discharged

~ Sentenced in relation to the original offence

~ Ordered to pay:$_____

~ Committed to prison for balance of term under Intensive Correction Order

~ No Action taken

~ Number of community service hours increased

~ Period of community service extended

ADDITIONAL ORDERS

ORDERS RE PROPERTY

~ RESTITUTION OR COMPENSATION ORDERED

~ Total Amount ordered $

~ Time to pay_____ ~ In Default_____

~ s.685B (CODE) ORDER - PROPERTY HELD BY POLICE

Property subject to the order:_____

~ DRUGS MISUSE ACT FORFEITURE ORDER MADE(s.34 DMA)

~ DMA Forfeiture order made: ~ Real Estate ~ Motor Vehicle ~ Vessel ~ Aircraft ~ Shares ~ Bank Account

~ Cash $_____ ~ Bank Account $_____~ Other:_____

Value of property for purpose of order: $

~ CRIMES CONFISCATION ACT ORDER MADE

~ PECUNIARY PENALTY ORDER made: $

~ FORFEITURE ORDER made:

~ Real Estate ~ Motor Vehicle

~ Vessel ~ Aircraft ~ Cash: $_____~ Shares ~ Bank Account $_____

~ Other:(specify)_____

ORDER RE ACCUSED

~ SEXUAL OFFENDER ORDERED TO REPORT TO POLICE(s.19 Criminal Law Amendment Act 1945)

Period specified to report for:_____

~ DRIVERS LICENCE DISQUALIFIED(s.187 P@S or s.194 JJA)

~ Disqualified absolutely

~ Disqualified for a period of _____ yrs _____ mths

~ WEAPON FORFEITED UNDER WEAPONS ACT(s.155 Weapons Act)

~ DISQUALIFIED FROM HOLDING WEAPONS ACT LICENCE OR APPROVAL(s.155 Weapons Act)

~ SPECIAL ORDER RE CHILD

~ Parent of Child ordered to show cause why they should not pay compensation(s197)

~ Parent of Child ordered to pay compensation (s.198). Amount:_____

~ Order for Child=s Identifying particulars to be taken (s.194 A JJA)

(G) OF NCE OUTCOME SUMMARY

COUNT No / s	INDICTMENT OFFENCE OUTCOME (all counts with the same outcome can be summarised on the same line) (use the terms set out in the index below and attend to other action as set out in bold in index)
1	GUILTY (P)
2	GUILTY (P)
3	GUILTY (P)

OFFENCE	SUMMARY OFFENCE OUTCOME (all offences of the same type with the same outcome can be summarised on the same line)

S. 189 OFFENCES TAKEN INTO ACCOUNT ON SENTENCE

INDEX OF TERMS TO BE USED IN "OUTCOME "COLUMN ABOVE

GUILTY(P)- Guilty Plea GUILTY(T)- Guilty Verdict GUILTY(A-specify alt offence)- Guilty Verdict to statutory alternative: (specify)
ALTERNATIVE- VERDICT NOT REQUIRED - Accused convicted on count (specify) verdict not required on this count
NOT GUILTY-Not Guilty Verdict- **PROSECUTOR COMPLETE A BRIEF NOTE OUTLINING DEFENCE ARGUMENT AT TRIAL**
NOLLE(S)-Nolle at start of proceedings-**COMPLETE PART (E) CHARGE DISCONTINUANCE .**
NOLLE(E)Nolle after argument / evidence-**COMPLETE PART (E) CHARGE DISCONTINUANCE .**
NOLLE(M)-Nolle at mention-**COMPLETE PART (E) CHARGE DISCONTINUANCE .**
ADJOURNED(C) - Adjourned on Crown application **COMPLETE A NOTE RECORDING REASON.**
ADJOURNED(D) - Adjourned on defence application **COMPLETE A NOTE RECORDING REASON.**
HUNG - Jury unable to agree
STAY-Charge stayed by court-**COMPLETE PART (E) CHARGE DISCONTINUANCE .**
NO TRUE BILL-No true bill-**COMPLETE PART (E) CHARGE DISCONTINUANCE .**
MISTRIAL - Mistrial- Jury discharged without verdict-**PROSECUTOR COMPLETE A BRIEF NOTE OUTLINING REASON FOR MISTRIAL**
NO CASE - Judge ruled no case to answer
OTHER IN LIEU - Plea on another charge accepted in lieu of this charge-**COMPLETE PART (E) CHARGE DISCONTINUANCE .**
BREACH-Offender dealt with for breach of earlier order

If more than one offence summarise the total effective sentence. Do not record the individual sentences.

~ Accused sentenced as a CHILD
~ Accused sentenced as an ADULT

~ A CONVICTION was RECORDED
~ A CONVICTION was NOT RECORDED

IMPRISONMENT ORDERED

~ IMPRISONMENT / DETENTION ORDERED

CHILD

~ Child detained for _____ years _____ mths
~ Order for Release of Child after serving _____% of detention
~ Immediate Release Order re child

ADULT

~ Life imprisonment
~ Adult imprisoned for _____ yrs _____ mths
~ Adult imprisonment totally suspended
~ Adult imprisonment partially suspended after serving _____ yrs _____ mths
~ Operational period of (adult) suspended imprisonment_____yrs_____mths
~ Recommendation for parole after having served _____ yrs _____ mths

SPECIAL ORDERS RE IMPRISONMENT

~ Declaration of serious violent offence ~ Intensive correction order made ~ Indefinite sentence imposed
~ Imprisonment was ordered to be cumulative upon_____

NON CUSTODIAL ORDER

~ PRE-SENTENCE CUSTODY DECLARED_____ _DAYS

~ INTERMEDIATE ORDER

~ Probation for _____ yrs _____ mths
~ Community Service _____ hours
~ Probation for _____ yrs _____ mths and Imprisonment for_____mths

~ DISCHARGE/RELEASE / GOOD BEHAVIOUR ORDER

~ (Adult)Discharge/ Release absolutely
~ (Adult) Release on recognisance for _ yrs ___ mths
~ (Child) Reprimand
~ (Child) Good Behaviour Order for ____yrs____ mths
~ Amount of recognisance $

~ FINE

~ Fine in the amount of $_____ ~ Default period_____
~ Fine Option Order made ~ Time to pay_____

~ SENTENCED TO RISING OF THE COURT

~ COMMUNITY CONFERENCE ORDERED

ORDER MADE UPON BREACH PROCEEDINGS

~ ORDER MADE FOR BREACH OF SUSPENDED IMPRISONMENT ORDER

~ Operational period extended by:_____
~ Offender ordered to serve whole period of suspended sentence:_____(period)
~ Offender ordered to serve part of the period of suspended sentence_____(period) of_____(total period)

~ ORDER MADE FOR BREACH OF COMMUNITY BASED ORDER

Type of order breached:~ Probation ~ Community Service ~ Intensive Correction
Offender ~ Admonished and discharged
~ Sentenced in relation to the original offence
~ Ordered to pay:$_____
~ Committed to prison for balance of term under Intensive Correction Order
~ No Action taken
~ Number of community service hours increased
~ Period of community service extended

(G) OFFENCE OUTCOME SUMMARY

COUNT No / s	INDICTMENT OFFENCE OUTCOME (all counts with the same outcome can be summarised on the same line) (use the terms set out in the index below and attend to other action as set out in bold in index)

OFFENCE	SUMMARY OFFENCE OUTCOME (all offences of the same type with the same outcome can be summarised on the same line)

S. 189 OFFENCES TAKEN INTO ACCOUNT ON SENTENCE

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NOLLE(E)Nolle after argument / evidence-**COMPLETE PART (E) CHARGE DISCONTINUANCE .**

NOLLE(M)-Nolle at mention-**COMPLETE PART (E) CHARGE DISCONTINUANCE .**

ADJOURNED(C) - Adjourned on Crown application-**COMPLETE A NOTE RECORDING REASON.**

ADJOURNED(D) - Adjourned on defence application-**COMPLETE A NOTE RECORDING REASON.**

HUNG - Jury unable to agree

STAY-Charge stayed by court-**COMPLETE PART (E) CHARGE DISCONTINUANCE .**

NO TRUE BILL-No true bill-**COMPLETE PART (E) CHARGE DISCONTINUANCE .**

MISTRIAL - Mistrial- Jury discharged without verdict-**PROSECUTOR COMPLETE A BRIEF NOTE OUTLINING REASON FOR MISTRIAL**

NO CASE - Judge ruled no case to answer

OTHER IN LIEU - Plea on another charge accepted in lieu ofthis charge-**COMPLETE PART (E) CHARGE DISCONTINUANCE .**

BREACH-Offender dealt with for breach of earlier order

(H) PROSECUTOR CERTIFICATION

(i) The accused was ~ convicted of all alleged offences
~ acquitted or discharged on all alleged offences
~ acquitted or discharged on the major alleged offence but convicted of a lesser offence
~ convicted of some (but not all)offences on the indictment.

(ii) ~ There was a NOLLE which terminated indictment proceedings against the accused.
~ There was a NOLLE / CHARGE REDUCTION which materially reduced the criminality alleged
~ Not Applicable

(iii) ~ The JUDGE ~ A PERSON CONCERNED has made ~ a favourable ~ an adverse comment re prosecution.
~ Not Applicable

(iv) ~ I am satisfied that the SENTENCE IS WITHIN RANGE.
~ I am not satisfied that the sentence was within range- SENTENCE APPEAL RECOMMENDED-(send memo to DPP appeals).
~ Not Applicable

(v) ~ I consider that the Judge wrongly ruled against the prosecution on a pure question of law. (send memo re A.G. REFERENCE)
~ Not Applicable

(vi) ~ The accused was a registered TEACHER- notice to be sent to Board of Teacher Registration.
~ Not Applicable

(vii) ~ Further action required on this indictment as recorded in attached note
~ No further action required on this indictment

(vii) ~ Other charges on this file remain to be determined
~ No other charges /indictment on this file remain-FILE MAY BE CLOSED

(viii) ~ DPP TRIAL/ BRIEF PREPARATION COULD HAVE BEEN IMPROVED.
~ Not Applicable

(ix) ~Application was made (s.19) for sexual offender to report to police. ~Granted ~Refused

(x) ~Application was made (s161A) for Serious violent offender declaration ~Granted ~Refused

(xi) ~Application was made for an indefinite sentence ~Granted ~Refused

NOTES

(If more than one Indictment relating to this accused dealt with at the same time, record here the total effect of what happened. eg- the total effective sentence)

_____

_____

_____

_____

_____

_____

CROWN PROSECUTOR SIGNATURE:

SUPREME COURT OF QUEENSLAND

CITATION:	*R v Baker; ex parte Attorney-General* [2001] QCA 59
PARTIES:	**R** **v** **BAKER, Kevin Leslie** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (applicant)
FILE NO:	CA No 241 of 2000 DC No 55A of 1999
DIVISION:	Court of Appeal
PROCEEDING:	Reference under s 669A Criminal Code
ORIGINATING COURT:	District Court at Rockhampton
DELIVERED ON:	27 February 2001
DELIVERED AT:	Brisbane
HEARING DATE:	2 February 2001
JUDGES:	McMurdo P, Williams JA, Mackenzie J Separate reasons for judgment of each member of the Court, each concurring as to the orders made.
ORDER:	**In answer to the Attorney-General's Reference Question: "Can specifying an alleged act as the first occasion when conduct of a certain type was committed be sufficiently particular to identify the offence charged"** **An accused person is entitled to be sufficiently apprised of the particular occasion referred to in a charge against him. When it is alleged that a series of acts of a similar character was committed, it is necessary to have regard to all relevant circumstances in deciding whether the accused person's right to be adequately apprised of the occasion to which the count relates has been satisfied. The utility of describing a charged act as the "first occasion", when such particularisation is given as a step towards attempting to ensure that the accused's rights have been accorded to him, will depend on the particular circumstances of the case. In the absence of any objective fact or event to which the charged event can be related, reliance only on that identifying feature in a case where the offence was one of a number which allegedly occurred**

in the distant past and the period in which it was alleged to have occurred is lengthy, will ordinarily mean that there is insufficient compliance with what is required for the purposes of proper administration of justice.

CATCHWORDS:	CRIMINAL LAW - ATTORNEY-GENERAL REFERENCE S669A CRIMINAL CODE – rape – indecent dealing – alleged offences occurred in distant past – meaning of "first occasion" as part of particulars – delay in instituting the reference
	Criminal Code Act 1899 (Qld), s 669A, s 669 A(1A)
	DPP v His Honour Judge Lewis [1997] 1 VR 391, applied *Johnson v Miller* (1937) 59 CLR 467, considered *R v Fisher* CA No 439 of 1994, 12 December 1994, considered *R v Knuth* [1998] QCA 161; CA No 64 of 1998, 23 June 1998, considered *R v Lewis;* ex parte Attorney-General [1991] 2 QdR 293, applied *Longman v The Queen* (1989) 168 CLR 79, considered R v Rogers [1998] QCA 83, CA No 445 of 1997 and CA No 17 of 1998, 6 May 1998, considered *R v S* [2000] 1 Qd R 445, considered *S v The Queen* (1989) 168 CLR 266, considered
COUNSEL:	LJ Clare for the applicant P Callaghan for the respondent
SOLICITORS:	Director of Public Prosecutions (Queensland) for the applicant John Murphy & Co Lawyers for the respondent

[1] **McMURDO P**: I agree with Mackenzie J's reasons for judgment and proposed order.

[2] **WILLIAMS JA**: Whilst the expression "the first occasion" may well have temporal meaning for the maker of the statement, it will not necessarily convey that (or indeed any) meaning to another person, unless the context in which it is used attributes such meaning to it. Unless the context includes some objective criteria the use of the phrase may well indicate something different according to the knowledge and experience of the person called upon to ascribe meaning or significance to it. Only context would result in the phrase identifying an event.

[3] The question posed for the court to answer requires consideration of the use of the phrase "first occasion" as part of particulars intended to apprise an accused person of the particular act, matter or thing alleged as the foundation of the charge; such

particulars are considered necessary in order to give an accused person every fair opportunity of preparing his defence.

[4] As Mackenzie J has pointed out in his reasons, where the events in question occurred many years ago, and more particularly where repeated acts are involved or regular conduct is alleged, the use of the phrase the "first occasion" is not of itself conducive to clearly defining the act, matters or thing in issue. As is evident from the reasoning in *Longman v R* (1989) 168 CLR 79, where there has been lengthy delay in bringing a prosecution, the fairness of the trial may be impaired where the acts alleged to constitute the offence are not clearly disclosed to the accused.

[5] But that is not to say, as is demonstrated in the reasons of Mackenzie J, that the phrase may never be capable of identifying with the sufficient particularity the conduct alleged to constitute the offence. In such a case it is the context in which the expression is used that gives it significance.

[6] If a small number of events are alleged to have occurred within a relatively short, recent time frame then it may well be that the events are sufficiently differentiated by describing one as the "first occasion".

[7] The use of the phrase "first occasion" when supplying particulars of alleged criminal conduct will usually give rise to consideration of the problems discussed in cases such as *S v The Queen* (1989) 168 CLR 266, *R v S* [2000] 1 Qd R 445, *R v Fisher* CA No 439 of 1994, 12 December 1994, *R v Knuth* [1998] QCA 161, CA No 64 of 1998, 23 June 1998, and *R v Rogers* CA No 445 of 1997, 6 May 1998. Whether or not the particulars supplied satisfy the text laid down in cases such as *Johnson v Miller* (1937) 59 CLR 467 at 489-491 will depend on the circumstances of each case.

[8] I agree with all that has been said by Mackenzie J in his reasons and with the way in which he would answer the question posed for the court's consideration.

[9] **MACKENZIE J:** This matter comes before the court in the form of a reference by the Attorney-General under s 669A(1A) of the Criminal Code which authorises him in certain circumstances to refer, for the court's consideration and opinion, any point of law that has arisen at the trial of a person on indictment.

[10] The indictment contained two counts of indecently dealing with a girl under 12 between 22 March 1968 and 23 March 1970 (counts 1 and 2), one count of rape during the same period (count 3) and one count of indecently dealing with a girl under 17 between 22 March 1968 and 23 March 1973 (count 4). All offences are alleged to have been committed against the same girl. After rulings by the trial judge in the District Court, the Crown Prosecutor entered a *nolle prosequi* on counts 2 and 3. The trials of counts 1 and 4 were adjourned. Entry of a *nolle prosequi* is one of the circumstances which enlivens the jurisdiction under s 669A(1A).

[11] The ruling by the District Court Judge was made when the defence submitted, at the end of the prosecution case, that there was no case fit to go to the jury in relation to counts 1, 2 and 3, and especially on counts 2 and 3. It was complained that there was an absence of adequate particularisation. His Honour made the following ruling:

> "In relation to counts two and three, the best the Crown can do is to say that this is the first occasion on which intercourse took place. This is not sufficient in the absence of any identifiable objective external fact or event ... . The reference to the accused's room is not enough because the same particular applies to all of the other occasions. ... Against that, the Crown cannot otherwise point to any objective external fact or event which would distinguish the first occasion from all the others which on the Crown case could have occurred at any time in a two year period from when the complainant was eight or nine. ... In the result, in relation to counts two and three, I rule in favour of the application and I invite the Crown to test my ruling in the usual way."

[12] In the course of his ruling he referred to *S v The Queen* (1989) 168 CLR 266, *R v Fisher* CA No 439 of 1994, 12 December 1994, *R v Rogers* [1998] QCA 83, CA No 445 of 1997 and CA No 17 of 1998, 6 May 1998, *R v Knuth* [1998] QCA 161, CA No 64 of 1998, 23 June 1998, and *DPP v His Honour Judge Lewis* [1997] 1 VR 391. The question is asked in the following form:

> "Can specifying an alleged act as the 'first occasion' when conduct of a certain type was committed be sufficiently particular to identify the offence charged."

[13] In *R v Lewis* ex parte Attorney-General [1991] 2 Qd R 293, 300 Macrossan CJ, which whom Kelly SPJ agreed, said the following:

> "... s 669A requires the court to express an opinion on a point of law said to be contained in a reference or at least requires the court in expressing its opinion to answer the question said to be raised, only if the point is of the character to which it can be assumed the subsection intends to refer. It is concerned with a point involving principle capable of some general application as opposed to rulings which are dependent upon the manner in which an assessment is made of particular factual situations which are not readily capable of wider application to other situations."

[14] A wide variety of factual situations may be presented for consideration when it is alleged that sexual offences have been committed. The offences may have occurred many years ago, as in the present case, or quite recently. The offences may be numerous or few in number. They may extend over a long period, or be confined to a short timespan. For this reason a range of circumstances individual to the particular case may need to be taken into account in deciding whether the accused person's right to be apprised of a particular act, matter or thing alleged as the foundation of the charge has been satisfied. Where there are allegations of multiple acts, all of which are capable of satisfying the definition of the offence, the particular occasion alleged to constitute the offence referred to in a specified count must be adequately identified so that the accused person knows against what he must defend himself and so that jurors all focus on the same event in coming to a verdict.

[15] A preliminary point was taken that the court should decline to answer the question because of delay in instituting the reference and because of the intention of the Director of Public Prosecutions to proceed again on counts 2 and 3, notwithstanding

the *nolle prosequi*, in the event of a favourable answer to the question. The *nolle prosequi* was entered on 17 December 1999. The reference was not filed until 13 September 2000.

[16] In explaining the delay the Director, who appeared in person, informed the court that another similar prosecution had subsequently failed due to a similar ruling and that it had been decided to bring the reference in the present matter because it was considered a more suitable vehicle for arguing the point. There is no time limit for referring a question under s 669A, but where it is intended to proceed again, notwithstanding a *nolle prosequi,* if the question is answered in a way which calls the original ruling into question it is obviously desirable that it be brought promptly. Having regard to the view of the law in these reasons it is not critical to decide finally the question of what remedy, if any, is available in the event of undue delay which may work an unfairness on an accused person.

[17] Whether the requirement that an act charged be sufficiently particularised can be satisfied by defining a count as "the first occasion" when a series of essentially identical acts have occurred will depend on the circumstances. For example, if a complainant alleged that two offences occurred in a similar way in the same room of a house during a recent period while the complainant was staying with relatives for a short holiday, but was unable to identify specific dates, it could hardly be correct to deny that identification of one of the alleged acts as the first and one as the last provided sufficient particularisation.

[18] In that example, the circumstance that the offences were recent minimises the risk that an accused person will have lost the means of testing the complainant's allegations adequately. On the other hand, where there has been a long delay, the period in which the particular offence is alleged to have occurred is lengthy and there are insufficient features in the evidence which would enable an accused person to identify a particular occasion upon which the act is alleged to have occurred an accused person will have no real means of testing the complainant's allegations.

[19] Where there has been lengthy delay in bringing the prosecution, *Longman v The Queen* (1989) 168 CLR 79 requires that a warning be given in the summing up concerning the loss of those means of testing the complainant's allegations which would have been open to the accused had there been no such delay, even in a case where particularisation is adequate.

[20] In *R v S* [2000] 1 Qd R 445, the earlier Court of Appeal decisions in *R v Fisher* (supra), *R v Rogers* (supra) and *R v Knuth* (supra) were analysed with the focus on demonstrating that the factual context as a whole is important in deciding the sufficiency of particulars. It was doubted whether it is possible or helpful to attempt to lay down absolute rules in this area. The conclusions in *R v S* were expressed in the following paragraphs:

> "Once the sufficiency of particulars falls to be decided in the context of the particular circumstances of the individual case, each case must be decided on its merits. Cases which are insufficiently particularised may have common characteristics. So may sufficiently particularised cases. However, in the end, it may be a matter of judgment and impression whether a case falls on one side

> of the line or the other, given the wide variety of circumstances which may exist."
>
> ...
>
> "It is a question of judgment as to which side of the threshold the matter falls. In many situations, it will be apparent that particularising a count as the first or last in a series of indistinguishable events will not provide a sufficient indication to an accused person of the case he must meet, thereby embarrassing him in his defence. However, in the present case, the other factors ... provide a context which ... was sufficient to allow the accused person to adequately make his defence."

[21] In the case upon which the reference is based, the offences are alleged to have occurred many years ago over a span of years. In such a case, the absence of objective external facts, events or circumstances which differentiate a particular count from other alleged offences of the same kind committed within the same period will ordinarily make it insufficient for the offence to be described as the "first occasion".

[22] In the present case it was alleged that the first offence was the occasion upon which the complainant lost her virginity. It was submitted that this was a distinguishing feature of the offence.

[23] Attempting to lay down rules of general application in cases of this kind is fraught with difficulty. In individual cases there may be particular circumstances which falsify any attempt to state a general proposition. However, as a general rule, in the absence of any evidence that a consequence of an offence was overt at about the time of the offence, describing the offence as the "first occasion" in combination with a consequence which was personal to the complainant but not overt does not in my view advance the matter of adequate particularisation. The problem that led the High Court to express concern in *S v The Queen* that an accused would be effectively denied an opportunity to test the evidence against him by reference to objective surrounding circumstances would remain in such a case.

[24] The question referred by the Attorney-General is incapable of being answered with an unequivocal or unqualified "yes" or "no". The applicable principles are discussed in general terms in the preceding paragraphs. **An accused person is entitled to be sufficiently apprised of the particular occasion referred to in a charge against him. When it is alleged that a series of acts of a similar character was committed, it is necessary to have regard to all relevant circumstances in deciding whether the accused person's right to be adequately apprised of the occasion to which the count relates has been satisfied. The utility of describing a charged act as the "first occasion", when such particularisation is given as a step towards attempting to ensure that the accused's rights have been accorded to him, will depend on the particular circumstances of the case. In the absence of any objective fact or event to which the charged event can be related, reliance only on that identifying feature in a case where the offence was one of a number which allegedly occurred in the distant past and the period in which it was alleged to have occurred is lengthy, will ordinarily mean that there is insufficient compliance with what is required for the purposes of proper administration of justice.**

[25] I would answer the Attorney-General's question in accordance with the sentences in bold type in the preceding paragraph.

NOTES:

IF YOU ARE NO LONGER ACTING IN MATTER

(1) Please note that **Practice Direction No. 1 of 1992, CRIMINAL JURISDICTION OF DISTRICT COURT** indicates that Solicitors who acted for an accused person at a committal hearing (unless they have advised that they have ceased to act), or who commence to act for an accused person at any time after committal hearing, are expected to appear at the callover during the sittings to which the accused was committed unless they have been told that an indictment will not be presented on that date.

IF OTHER CHARGES ARE PENDING

(2) If your client(s) has other charges pending which you are instructed may proceed by ex officio indictment, please advise this Office as soon as possible giving details of the charges and the name and Station of the Arresting Officer in respect of those charges.

IF A PLEA OF GUILTY IS INTENDED

(3) ***The Penalties and Sentences Act 1992*** provides that a Court may when imposing a sentence have regard to the time at which the offender informed the relevant law enforcement agency of his or her intention to plead guilty. If your client(s) intends to plead guilty to the charge(s) in the indictment, please advise this Office in writing as soon as possible.

IF YOU WISH TO MAKE A SUBMISSION

(4) If your client(s) wishes to make a submission regarding reduction or discontinuance of the charge(s) in the indictment, whether before presentation of the indictment or after presentation, please forward the submission in writing to the Solicitor for Prosecutions at this Office as soon as possible. Written submissions are preferred.

IF YOU WISH A COPY OF DEPOSITIONS OR EXHIBITS

(5) If you wish to receive a copy of the Depositions then these are available upon request from the **Depositions Officer**, tel (07) 3239 6780.

All physical exhibits can be made available for inspection upon request from the **Exhibits Officer**, tel (07) 3239 0665. Copies of photographs are available from the Queensland Police Service pursuant to the ***Police (Photographs) Act 1966-1981.***

Office of the Director of Public Prosecutions

NOTIFICATION OF VSS FILE

VICTIM LIAISON OFFICER: MANDEEP PADDAM	PHONE NO: 96148

ACCUSED DETAILS:

NAME:	
FILE NO:	CYPHER:

ARRESTING OFFICER:

NAME:	STATION:	PHONE NO:
CHARGES:		

COMPLAINANT DETAILS

NAME:		DOB:	M/F
ADDRESS:			
		POSTCODE:	
CONTACT PERSON:		RELATIONSHIP:	
PHONE NO (H):	(W):	(Mob):	
NAME:		DOB:	M/F
ADDRESS:			
		POSTCODE:	
CONTACT PERSON:		RELATIONSHIP:	
PHONE NO (H):	(W):	(Mob):	
NAME:		DOB:	M/F
ADDRESS:			
		POSTCODE:	
CONTACT PERSON:		RELATIONSHIP:	
PHONE NO (H):	(W):	(Mob):	

IS THE COMPLAINANT A CHILD?	YES	NO		
ARE THERE ANY OTHER CHILD WITNESSES?	YES	NO	NAMES:	
WILL THE COMPLAINANT REQUIRE AN ASSESSMENT?	YES	NO	CAPACITY	SPECIAL
DOES THE COMPLAINANT HAVE A DISABILITY?	YES	NO	INTELLECTUAL	PHYSICAL
WILL THE COMPLAINANT REQUIRE AN INTERPRETER?	YES	NO	LANGUAGE:	
IS THE COMPLAINANT ABORIGINAL/TORRES STRAIT ISLANDER?	YES	NO		
COMMENTS:				

BRISBANE POLICE PROSECUTIONS CORPS
Q.P.9. COURT BRIEF CHECK LIST
Answer all/every issue, rectify (or cause to be rectified) all faults.

DEFENDANT/S

....

SURNAME GIVEN NAMES AGE

....

Magistrates Court and No. Date of First Appearance

Answer each by:-
Cross (X) if fault found or action required.
Dash (-) if n/app. or n/req.;
Tick (✓) if correct,

LEAVE:.....
ETC.:.....

	Wording of Charges	Action Taken/Required
	on Q.P.9.	
	Bench Charge Sheet with Q.P.9.	
	Bench Charge Sheet on undertaking	
	on Summons / Notice to appear	
	Notice to appear Y/N	
	Issued more than 14 days Y/N	
	Sufficient particulars	
	Correct Court details	
	Averments - used as required	
	Amendments - cross if required	
	Statute correct	
	Sections correct	
	All **elements** covered by full facts	
	Should charge be substituted	
	Within time jurisdiction	
	Within locality jurisdiction	
	Authority to prosecute required	
	Certificates attached	
	Compensation/Restitution sought	
	Quotes attached/figures shown	
	Order for disposal of property sought	
	Pecuniary penalty order sought -	AMOUNT $
	Forfeiture - by what Statute?	
	Property	
	Drugs	
	Utensils	
	Disposal of property S. 685B CC	
	Criminal History (has nil/attached)	
	Copy of/Details of Message	
	Traffic History (nil/not required/att)	
	Drugs Offence	
	Election made on Q.P.9.Y/N	
	Summary/Indictment	
	Weight of Drugs/Number of Plants shown	
	Bail - Opposed Y/N	
	Objection details/affidavit attached Y/N	
	Conditions sought Y/N	

Defects Rectified (prior to dispatch) **Yes / No** **OK.** (If no further action required)

Comments:- .....

.....**QSP CHECKED Yes / No.**

....

NAME RANK REG.NO. SIGNATURE DATE

DISTRICT COURT

CRIMINAL JURISDICTION

JUDGE McGUIRE

Indictment No 2270 of 1998

THE QUEEN

v.

FRANCIS EDWARD DERRIMAN

BRISBANE

..DATE 10/12/98

SENTENCE

HIS HONOUR: Francis Edward Derriman, you have been found guilty by the jury on two counts of indecent dealing with a girl under the age of 16. You were acquitted on a third count. The offences were committed in 1968 when the complainant was a student aged 15 of the Sacred Heart Convent Sandgate and you were a priest who ministered to the school. She was aged 15. You were aged about 30.

In the trial the Crown adduced evidence of what has become known as the Brown Family, the Lolita Book, letters by you and your health, through the complainant, for the purpose of showing the unusual relationship that existed between you and the complainant and also for the purpose of showing that you used these devices as a softening-up process so as to condition the complainant for your attempted seduction of her. This same evidence was also used to explain why the complainant did not complain about your sexual advances at the first reasonable opportunity which offered itself.

I take into account not only the acts themselves but the modus operandi you employed. You made it clear to the complainant that your aim was to have sex with her. You played on her emotions and sympathy by pretending you were so chronically sick as to be in danger of imminent expiration. However, to your credit, you desisted when she protested.

The case is a bad one because of the unequal relationship between you and the complainant. You were a priest and she was a schoolgirl. It is appalling to think while acting in the capacity of a priest you tried to seduce her.

The bushland episode betrays a good deal of premeditation and deceit and the same can be said about the drive-in episode.

I cannot myself characterise these episodes as altogether minor. One cannot divorce the acts themselves from the lead-up to them and the circumstances surrounding them. The second episode lasted some minutes. By virtue of your office you were in a position of dominance over the complainant. Your acts constituted a gross and flagrant betrayal of priestly trust. The feature of the case is the long delay in prosecuting the matter.

I will now deal with delay and effect of delay on sentence. In the case of Dick (1994) 75 Australian Criminal Reports the Western Australian Court of Appeal said:

> "So far as the lapse of time since the offences is concerned" - in that case 30 years also - "there is said to be a distinction between offences of dishonesty, robbery, and the like, and sexual abuse. Although referring to the position within a family, Lord Justice Taylor, speaking for the English Court of Appeal in Tiso (1990) 12 Criminal Appeal Reports observed of offences involving sexual abuse that they are, by their very nature, likely to remain undetected for substantial periods, partly because of fear, partly because of family solidarity, and partly because of embarrassment."

The Court went on to say:

> "We consider that whilst any factors which have positively emerged between the offences and the trial are open to the Court to be taken into consideration, the mere passage of time cannot attract a great deal of discount by way of sentence in relation to offences of this kind."

And in the Queensland case of Law (CA 176 of 1995, judgment delivered on 6 October 1995) the Queensland Court of Appeal without reference to Dick, which had been decided before Law, said:

> "It is difficult to see why a lapse of time between commission of an offence and sentence should be a mitigating factor in sentence unless that delay has resulted in some unfairness to the offender. There are two obvious cases in which that will be so and in which, consequently, it has been said that unfairness should mitigate the sentence which should otherwise be imposed."

The first is inordinate and unexplained delay in investigating a complaint or in prosecuting it. The second is "Where the time between the commission of the offence and the sentence is sufficient to

enable the Court to see that the offender has become rehabilitated, or that the rehabilitation process has made good progress."

The Court went on to say:

> "There may well be other bases for mitigation arising out of a lapse of time between commission of an offence and sentence, involving general notions of fairness."

I now deal with changes in the law. At the relevant time, 1968, the maximum penalty for indecent dealing with a girl under 17 was two years' imprisonment. I stress that. The maximum penalty at that time was two years' imprisonment. Since then the maximum penalty has risen progressively from two to five, from five to seven, and from seven to 10 in 1997. These progressive increases in penalty for this class of offence reflect no doubt a change in community attitudes which have come about by reason of the realisation of the prevalence of these offences within the community, a fact which has long been concealed.

Section 11(2) of the Criminal Code provides:

> "Effect of changes in the law. If the law in force when the act or offence occurred differs from that in force at the time of the commission the offender cannot be punished to any greater extent than was authorised by the former law."

That means that so far as these offences are concerned the old sentencing regime (i.e. the 1968 regime) applies: see Richardson v. Brennan (1996) WAR 159. However, I doubt whether in arriving at an appropriate head sentence one is obliged or that it is appropriate to do a proportional sum.

In my opinion, this is the sort of case where the sentence imposed should act as personal deterrence as well as a general deterrence, and there is also in these type of cases a denunciatory purpose in the sentencing to be served.

The complainant does not allege that you used physical force on her. However, by virtue of your position of dominance in relation to her you exerted moral coercion, a much more subtle and sinister thing. There are probably good though complicated psychological reasons why the complainant did not complain at the appropriate time. Nevertheless, delays such as have occurred here in bringing the matter to the attention of the authorities makes the task of sentencing even more difficult than it ordinarily is in cases of this kind.

There is much truth in Lord Chancellor Bacon's aphorism, "Swift justice is best". Retribution in this case, though slow, was sure: the proverbial chickens have come home to roost.

As the authorities show the fact that an offence is old does not diminish its gravity but may, if rehabilitation has occurred between the offence and sentence, be a circumstance of mitigation. I have been shown the impact statement of the complainant. It indicates that these happenings in 1968 have had a severe and continuing detrimental effect on her personally and on her life.

Rehabilitation. A long time has gone by since these offences were committed, 30 years. You left the church in 1970 and married. You presently reside in Ballarat, Victoria. You describe your occupation as social worker, university teacher. You are aged 60. You have no convictions of any kind.

A number of testimonials have been tendered on your behalf. They speak eloquently of your work as a social worker and teacher. You have now, it seems, formed a relationship with the woman by whom you have two young children who are dependent on you. These testimonials taken at face value

indicate that you are well regarded personally and professionally in the community in which you live. I am satisfied, therefore, that you have made strenuous efforts to rehabilitate yourself.

Nevertheless, I am of opinion that the nature and circumstances of the offences are such that a custodial sentence is warranted. The sentence to be imposed is one year imprisonment. However, giving due weight to the rehabilitative aspect referred to above I will order early suspension of that term.
I have considered recent Queensland cases of this kind involving clerics: McKeirnan, District Court, 21 October 1998; Cleary, District Court, 6 November 1998; and Wright, District Court, 9 September 1997.

I now pronounce sentence. In respect of counts 2 and 3 the sentence of the Court is that you be imprisoned for one year. I order that that term be suspended after serving four months for a period of two years during which time you must not commit any offence punishable by imprisonment otherwise the Court will be empowered to order the balance of the suspended term, namely nine months, be enforced or any part thereof it considers just in the circumstances.

MR TAEFFE: With respect, eight months, Your Honour.

HIS HONOUR: Eight months, thank you. Eight months will be enforced or any part thereof it considers just in the circumstances. The sentences are concurrent and it follows that convictions will be recorded.

Supreme Court of Queensland - Court of Appeal

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R v P; ex parte A-G [2002] QCA 421 (10 October 1902)

Last Updated: 29 October 2002

SUPREME COURT OF QUEENSLAND

CITATION:	*R v P; ex parte A-G* [2002] QCA 421
PARTIES:	**R**
	v
	P
	(respondent)
	EX PARTE ATTORNEY-GENERAL OF QUEENSLAND
	(appellant)
FILE NO/S:	CA No 172 of 2002
	DC No 1205 of 2002
	DC No 1206 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Sentence by A-G (Qld)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EXTEMPORE ON:	10 October 2002
DELIVERED AT:	Brisbane
HEARING DATE:	10 October 2002
JUDGES:	McMurdo P, McPherson JA and Holmes J
	Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	Appeal allowed.
	Vary the sentence imposed at first instance by deleting the order that the sentence be wholly suspended and instead order that the sentence be suspended after the respondent has served four months' imprisonment. Sentence imposed at first instance otherwise confirmed.

A bench warrant to issue for the arrest of the respondent and lie in the Registry for one week before issue.

CATCHWORDS: CRIMINAL LAW - APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION - APPEAL AGAINST SENTENCE - APPEAL BY ATTORNEY GENERAL OR OTHER CROWN LAW OFFICER - APPLICATIONS TO INCREASE SENTENCE - OFFENCES AGAINST THE PERSON - where respondent convicted by own plea of 21 counts of indecent treatment of child under 12 and 3 counts of indecent treatment of a child under 17 - where respondent sentenced to 2 years imprisonment wholly suspended with an operational period of three years on all offences - whether sentence manifestly inadequate in the circumstances - where authorities support a term of actual imprisonment

Juvenile Justice Act 1992 (Qld) s 107B

Everett v R; Phillips v R (1994) 181 CLR 295, referred to

R v Crowley [2001] QCA 39, CA No 364 of 2000, 15 February 2001, considered

R v J; ex parte A-G [2001] QCA, CA No 5 of 2001, 1 June 2001, considered

R v Gerhardt; ex parte A-G [1999] QCA 477; CA No 303 of 1999, 16 November 1999, referred to

COUNSEL: M J Copley for the appellant

P S Hardcastle for the respondent

SOLICITORS: Director of Public Prosecutions (Queensland) for the appellant

Hemming & Hart for the respondent

THE PRESIDENT: The respondent pleaded gui lty to

21 counts of indecent treatment of girls under 12 and three counts of indecent treatment of girls under 17. The charges were contained in two indictments spanning the period from May 1970 until December 1976, although the pleas were accepted on the basis that the offences occurred before the respondent left the family home when he was 18 years old in December 1973.

The respondent was sentenced to two years' imprisonment wholly suspended with an operational period of three years on all offences. The appellant, the Attorney-General of Queensland, contends that this sentence was manifestly inadequate in that it failed to reflect the gravity of the offences, failed to take into account general deterrence and that the sentencing Judge gave too much weight to mitigating factors.

The respondent was the eldest in his family born on 3 October 1955. The offences were committed upon his younger sisters born in 1959 and twins born in 1962 and the youngest born in 1966. One offence was also committed upon his sisters' friend who was born in 1962. The offences commenced in 1970 with the eldest sister when she was 11 years of age and the respondent was 15. The respondent and his sister were playing cards in his bedroom whilst lying on the bed under a blanket. He rubbed his erect penis up and down against the skin of her thighs whilst he held his arm over her holding her in position. She felt uncomfortable and tried to move away but he pulled her back and continued his behaviour. She firmly pushed him away and saw his exposed erect penis.

Later in 1970 he commenced a series of offences in respect of another sister born in 1962. She was then aged eight, in grade 3 at school, and he was about 15. One evening he came into her room, picked her up, took her to his room and told her to be quiet. He undressed her completely and got under the bedcovers with her. He rubbed her vagina and caused her pain. He again told her to be quiet again. He moved on top of her into the conventional sexual position and rubbed his penis on her thigh and in the area of her vagina squeezing her legs together so that his penis was between her upper thighs and vagina and he continued to do this until ejaculation. This behaviour was repeated on a number of the complainants and was described by the Prosecutor at sentence as intercrural sex.

In 1972, when this complainant was about 10, he took her into the shower. Their difference in size made it impossible for her to resist him. He was already naked and he removed her clothing from below the waist. He kept the shower running apparently to cover the noise. He gruffly told her to lie on towels on the floor on her side facing the wall. She understood she had no choice. He lay beside her and bent his leg up and over hers and rubbed her vagina with his hand. He then rubbed his penis up and down between her upper thighs and vagina until he ejaculated.

Later that year he enticed her into his bedroom, offering her chocolates. He very quickly shut the door and demanded she suck on his erect penis. She refused. He then told her to lie on the couch. When she did not comply, he dragged her to the couch and removed her shorts and underpants. Her face was pressed to the back of the couch and the respondent lay behind her. Her vagina was fully exposed and he rubbed her vagina and rubbed his penis in the vicinity of her vagina until ejaculation. He told her not to tell or there would be big trouble.

When this complainant was about 11, the respondent came into the bathroom whilst she was showering and demanded that she face the wall and again had intercrural sex with her. On another occasion he touched this complainant under her nightie on her vagina when they were watching TV. On yet another occasion he forced her into the toilet, stripped her lower clothing, fondled her vagina and had intercrural sex. He again told her not to tell anybody. Similar behaviour was repeated in the bathroom on yet another occasion when she was cleaning her teeth. At this time she was 12 years old and the respondent 18. On another occasion before her 13th birthday the respondent dragged her from the laundry to the bedroom and indecently dealt with her in his by now customary manner.

The offences involving the youngest sister commenced soon after her 7th birthday when the respondent carried her to the toilet, pulled her pants down, told her to lie down and face the wall in a forceful voice and rubbed his penis between her upper thighs near her vagina until ejaculation. He cleaned them both and told her not to tell anybody. Similar behaviour was repeated on two further occasions. The respondent was about 18 when these offences occurred.

The fourth incident involving the youngest sister involved the respondent forcing her to masturbate herself at his direction. Her older sisters entered the room and she complained to them. They were then protective of her whenever the respondent was present. The respondent required her to comply with his demands for intercrural sex on two further occasions.

When an 11 year old friend of the sisters was visiting, the respondent persuaded her to go into a bedroom and lifted her by the waist so that her bottom was near his face. He pulled her dress up under her waist and fondled her genitals inside her underpants pressing his groin against her bottom. He stopped his behaviour when he heard his sister's voice. He told her not to tell anyone or she would get into trouble.

The respondent committed a further eight offences upon another sister, commencing when she was eight and he was about 15. The first offence involved him touching and rubbing the complainant's vagina with his finger and placing his penis in the area of the vagina. The second offence involved similar behaviour in his bedroom. He committed another similar offence in his parents' bedroom. When he was interrupted he told the complainant to get dressed and hide under the bed.

On the next occasion the complainant was nine years old and asleep on her bed when the respondent took her into his bed, placed her on the top bunk, removed her clothes, touched her vagina and again rubbed his penis in the vicinity of her vagina. He next repeated this behaviour in the bathroom when the complainant was having a shower. He told her not to tell anyone.

He committed a similar offence when the complainant was 10 years old and he was 17 or 18 during the Christmas school vacation in the respondent's bedroom. The respondent committed the next offence in a similar manner when the complainant was in the shower and was aged about 11.

The final offence involving this complainant occurred in the bathroom during the summer school holidays when the complainant was 11 and the respondent about 18. He again fondled her vagina and told her not to tell anyone.

The matter was not investigated by police until recently. Some of the complainants phoned the respondent and he made admissions in the course of those recorded telephone calls. He was not interviewed by police in a formal record of interview. Only one of the five complainants was required to give evidence at committal. The respondent pleaded guilty at the committal in respect of matters involving all other complainants. After negotiations between the Prosecutor and defence the respondent pleaded guilty to the charges in the two indictments.

Victim impact statements from two of the sisters were tendered. One sister, in particular, has been deeply traumatised by the respondent's offending. It is plain that his behaviour has had an enormous detrimental effect on the lives of all the victims, but especially his second youngest sister.

The respondent was 46 years old at sentence. He currently resides with his wife and three of their five children. His wife is supportive of him and her handwritten letter explaining her support for him and her compassion and concern for the complainants was tendered at sentence.

The respondent has no relevant criminal convictions. In 1974 he was convicted of some petty stealing offences for which he was given light fines in the Southport Magistrates Court. He has not committed any further offences. He left school at 18 years of age and married when he was 19. He and his wife have raised five children. He has become a successful businessman. A number of references were tendered at the sentence from a priest, a senior pastor, and friends and business associates attesting to his genuine remorse, reform and present good-standing in the community.

Psychiatrist, Dr Peter Fama, reported that the respondent was, himself, the victim of sexual abuse, having been molested by an older cousin whilst visiting the cousin's family. Later the respondent was sexually molested whilst a boarder at school. Dr Fama opined that such experiences may have suggested to the respondent's young mind that sexual conduct with others was to some degree permissible as part of his development. There was now no evidence of ongoing sexual deviation. The respondent has had a developmental abnormality that he has subsequently overcome.

The respondent expressed his remorse through his barrister at sentence and claimed to realise the anguish that he has put his family and sisters through. It was also emphasised at the sentence and in this Court that the respondent has been actively involved in service clubs and in raising money for charities and community projects.

The maximum penalty applicable to any of these offences at the time of their commission was not more than five years. As many of the offences were committed when the respondent was a child, s 107B, Juvenile Justice Act 1992 (Qld) means that in respect of those offences the respondent could not be ordered to serve more than two years' imprisonment because he could not have been detained for longer than two years had he been sentenced as a child at the time the offences occurred.

A number of these offences, however, occurred after the respondent turned 17 years of age.

The learned sentencing Judge had the difficult task of sentencing a 46 year old man for offences committed upon his sisters and another when he was aged between 14 and 18 years. The offences were committed when the respondent was a very youthful first offender. There are, however, obvious serious aspects to the offending. There were five victims and the offences were committed over a substantial period of time. He used a degree of force and coercion and the position of his authority in the family as the older brother to commit these offences. The impact of his offending behaviour on the lives of at least one of the complainants has been devastating. Ordinarily, perpetrators of sexual offences like these will be required to serve a term of imprisonment. But for the respondent's youth at the time of the commission of the offences, a substantial term of imprisonment would be required. His youth, his subsequent rehabilitation, his cooperation, remorse and pleas of guilty are all factors which mitigate his sentence.

Some guidance in this difficult sentencing task can be gleaned from prior decisions of this Court. In R v. Crowley [2001] QCA 39, CA No 364 of 2000, 15 February 2001 the applicant was unsuccessful in claiming his sentence of 12 months' imprisonment suspended after three months was manifestly excessive. In that case the 43 year old offender pleaded guilty to 21 counts of indecent dealing with six boys when he was aged between 13 and 16 years. In that case, unlike here, the applicant had subsequent offences, although not for sexual offences, and the Court noted that he could not be seen to be a completely rehabilitated person. All his offending, however, occurred when he was a juvenile, whilst the respondent here committed further offences when he was 17 and 18.

The fact that this respondent committed a number of these offences after turning 17 also distinguishes this case from R v. J, ex parte Attorney-General [2001] QCA 216, CA No 5 of 2001, 1 June 2001.

The learned sentencing Judge was not referred to the case of

R v. Gerhardt, ex parte Attorney-General [1999] QCA 477,

CA No 303 of 1999, 16 November 1999 which is comparable to this case although there are some important differences. Gerhardt was sentenced to a wholly suspended two and a half year term of imprisonment for nine counts of indecent dealing. The conduct included simulated intercourse and digital vaginal penetration and forcing the girls to masturbate him. The girls were aged four to five and six to seven years of age. Some of the offences were committed when Gerhardt was a child and others when he was 18 or 19 and 21 or 22. The Court allowed the Attorney-General's appeal and required the respondent to serve four months of the two and a half year term of imprisonment before suspension. The Court recognised the significant mitigating factors, including the length of time since the offences occurred, the respondent's complete rehabilitation, his lack of any criminal record and that a sentence of actual imprisonment would be likely to disrupt his family and livelihood. However, because of the serious nature of the sexual acts, the number of offences, their callousness, the lengthy period of offending, the tender age of the victims and psychological consequences, the Court required a period of actual imprisonment to be served.

Whilst no decisions are precisely comparable, Gerhardt, in my view, strongly supports the appellant's contentions. Despite the reluctance to interfere on an Attorney's appeal, especially where this will involve incarcerating a respondent who is currently at liberty (see Everett v R, Phillips v R (1994) 181 CLR 295), I am persuaded that interference is warranted in this case and that the respondent must serve a term of actual imprisonment because of the serious nature of these offences, despite the many mitigating factors in his favour.

I would allow the appeal and vary the sentence imposed at first instance by deleting the order that the sentence be wholly suspended and instead ordering that the sentence be suspended after the respondent has served four months' imprisonment. I would otherwise confirm the sentence imposed at first instance. I would also order that a bench warrant issue for the arrest of the respondent.

McPHERSON JA: I agree.

HOLMES J: I agree.

THE PRESIDENT: That is the order of the Court.

MR HARDCASTLE: Your Honour, could I ask that the-----

THE PRESIDENT: Do you want the bench warrant to lie in the Registry for-----

MR HARDCASTLE; For a week, your Honour.

THE PRESIDENT: Do you have any problem with that?

MR COPLEY: No, your Honours.

THE PRESIDENT: Yes, the orders are as I have proposed and a further order is that the bench warrant will lie in the Registry for one week before issue.
