

DL v THE QUEEN (A38/2017)

Court appealed from: Court of Criminal Appeal of the Supreme Court of South Australia [2015] SASCFC 24

Date of judgment: 10 March 2015

Date special leave granted: 24 October 2017

After a trial by judge alone (Judge Rice) in the District Court of South Australia, the appellant was convicted of one count of persistent sexual exploitation of a child, between 1984 and 1994, in contravention of s50(1) of the *Criminal Law Consolidation Act 1935* (SA). The complainant, who is a nephew of the appellant, gave evidence of various acts, comprising indecent assault or unlawful sexual intercourse, by the appellant while the complainant was between 5 and 15 years old. While the prosecution called various other witnesses, including members of the complainant's family, the prosecution case was largely reliant upon acceptance by the Judge of the credibility and reliability of the complainant's evidence. The appellant gave evidence denying any sexual activities with the complainant. The defence case was that the allegations were motivated by ill-will on the part of the complainant and his family over certain events and the defendant's conduct regarding those events.

In his appeal to the Court of Criminal Appeal (Kourakis CJ, Blue & Bampton JJ), the appellant submitted, inter alia, that the verdict was unreasonable or could not be supported having regard to the evidence. He contended that there were inconsistencies and implausibilities in and in relation to the complainant's evidence, which must have led to a reasonable doubt about acceptance of his evidence; and there was no reason to reject beyond reasonable doubt the appellant's evidence.

The Court of Appeal held that, after considering the entirety of the evidence given by the complainant in conjunction with the evidence given by the other prosecution witnesses and by the appellant, it could not be said that the complainant's evidence was glaringly improbable, contrary to compelling inferences or otherwise such that it was not open to the Judge to accept it. Nor could it be said that it was not open to the Judge to reject the appellant's evidence. The case essentially turned on the direct conflict between the evidence given by the complainant and the appellant. It was open to the Judge on the evidence to be satisfied beyond reasonable doubt that the complainant was telling the truth about the sexual abuse alleged and that the appellant was not. The Judge had explicitly acknowledged that, even if he rejected the evidence of the appellant beyond reasonable doubt, that did not suffice to convict the appellant because before doing so he would need to be independently satisfied beyond reasonable doubt about the allegations made by the complainant and vice versa. The appellant had therefore not established that the verdict was unreasonable or that it could not be supported by the evidence.

The appellant further contended that the Judge erred as a matter of law in failing to give adequate reasons for his decision as he did not deal with incontrovertible, or arguably incontrovertible, inconsistencies affecting the credibility of the complainant. Those inconsistencies related to the complainant's account as to how and when the

acts of sexual abuse occurred and the complainant's evidence concerning disclosure of abuse to others.

The Court noted that a trial judge's findings of fact and his reasons are essential for the purpose of enabling a proper understanding of the basis upon which the verdict entered has been reached, and the judge has a duty, as part of the exercise of his judicial office, to state the findings and the reasons for his decision adequately for that purpose.

After examining all the inconsistencies alleged by the appellant, the Court concluded that in the circumstances, there was no need for the Judge to address specifically the questions identified by the appellant. It was open to the Judge to accept the complainant's evidence and reject the appellant's evidence. The verdict was not unreasonable or incapable of being supported, having regard to the evidence. The Judge's reasons were not inadequate as a matter of law.

The grounds of appeal are:

- The Court of Criminal Appeal erred in failing to hold that, by not identifying the particular sexual offences, separated by at least three days, which were found proved:
 - (1) the learned trial judge erred in law by failing to give adequate reasons;
 - (2) the verdict of guilty was uncertain, unreasonable and unsafe; and/or
 - (3) there was a miscarriage of justice.