



HIGH COURT OF AUSTRALIA

Public Information Officer

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DANIEL CRIS PHILLIPS v THE QUEEN

Mr Phillips should have been tried separately on sexual assault charges related to each of six female teenagers, the High Court has held.

The Court today published its reasons for orders it made on 9 December 2005 that Mr Phillips face five new trials for the charges on which he was convicted in relation to five of the six teenagers.

Mr Phillips, now 21, was charged with six counts of rape, one count of indecent assault and one count of assault with intent to rape. The first seven counts relate to five girls aged between 14 and 16 around Innisfail in northern Queensland between August 2000 and November 2001. The eighth count involved an 18-year-old woman in May 2003 in Brisbane. In the Queensland District Court, Judge Peter White dismissed Mr Phillips's applications for separate trials. Mr Phillips argued that the evidence of a complainant was admissible only on any charges relating to her, not on charges relating to other complainants. He argued that rules for reception of similar fact evidence were not satisfied, so trying all eight charges against him in a single trial was prejudicial.

In March 2004, he was convicted of three counts of rape, assault with intent to rape, and two counts of unlawful carnal knowledge as alternative charges to two of the rape charges. Mr Phillips was acquitted of indecent assault and one rape count and cannot be retried on these charges. He was jailed for a total of 12 years, made up of four years for each of two rapes, nine years on the third, and three months on each carnal knowledge count, to be served concurrently, plus three years for assault with intent to rape, to be served cumulatively. Mr Phillips unsuccessfully appealed to the Court of Appeal (but succeeded in having his sentence reduced from a total of 12 years' imprisonment to a total of 10 years due to the nine-year sentence for one rape being cut to seven years) and appealed to the High Court.

The Court unanimously allowed the appeal. Similar fact evidence requires a strong degree of probative force and must have a material bearing on the issues. In Mr Phillips's case the threshold was not met. The test for the admissibility of similar fact evidence expressed in the 1995 case of *Pfennig v The Queen* continued to be the applicable test.

The High Court ordered retrials on the six counts for which Mr Phillips was convicted in relation to five of the teenagers. Because Mr Phillips has now served terms for some offences on which he was convicted, it was for the prosecuting authorities to decide whether such retrials should proceed in these cases.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*