IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M1 of 2017

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

- v -

CHARLIE DALGLIESH (A PSEUDONYM)

Respondent

APPELLANT'S REPLY

Part I: Certification that the reply or the redacted version of the reply is in a form suitable for publication on the internet

1. The reply is in a form suitable for publication on the internet.

Part II: A concise reply to the summary of argument

2.1 The respondent asserts that the appellant "ought not be now heard to complain" about the process adopted in the Court below given the manner in which the appellant conducted its appeal in that Court.[1] But, of course, there would be nothing to complain about if the approach of the Court below was in accordance with authority. The respondent's submission is that the Court below *did* approach this matter in accordance with authority. If that is so, the manner in which the appellant conducted itself is of no consequence.

2.2 But the approach adopted by the Court below was not in accordance with authority. Comparable past sentencing cases cannot define the sentencing range. As has already been explained, the appellant did not induce the Court of Appeal's error.[2]

2.3 Furthermore, the observations of McHugh J concerning *Rushby*'s case go to support the appellant's general submission rather than detract from it.[3] His Honour described, in the quoted passage, a process whereby comparable cases are but one factor to be taken into account. Nevertheless, McHugh J warned against the positing of a pre-existing objective standard. The appellant's case is that the Court of Appeal posited a

[1] See *Respondent's Submissions* at [30]
[2] See *Appellant's Submissions* at [6.33]-[6.36]
[3] See *Respondent's Submissions* at [23]

Filed by: JOHN CAIN
Solicitor for Public Prosecutions
565 Lonsdale Street
Melbourne Vic 3000
DX 210290

Date: 3 March 2017
Telephone: (03) 9603 7666
Direct: (03) 9603 7631
Fax: (03) 9603 7460
Reference: 1500179

standard of this very nature in the form of a pre-existing grid of prior sentencing cases.

2.4 The respondent asserts that the appellant is, contrary to a previous undertaking given, attempting to visit the sentencing uplift upon the respondent.[4] But this is not so. Success in the appellant's appeal below was never contingent upon acceptance of the uplift submission, despite what the Court of Appeal might have thought. Had this been otherwise, the appeal would effectively have been neutered.

10 2.5 Finally, as to the question of the exercise of the residual discretion,[5] the Court below did not, or even suggest that it even might, exercise this discretion against the appellant. The question of any exercise of this discretion should be left to the Court below in the event of remitter.

Dated: 3rd day of March 2017

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Christopher Boyce SC
Senior Crown Prosecutor (Victoria)
Telephone: (03) 9603 7817
Facsimile: (03) 9603 7460
Email: chris.boyce@opp.vic.gov.au

[4] See *Respondent's Submissions* at [39]. As it happens, the Court of Appeal indicated that had it felt free to do so, it would have increased the sentence on Charge 1 from 3.5 years' imprisonment to something "significantly higher" than 7 years: see the judgment below at [132]
[5] See *Respondent's Submissions* at [43].