HIGH COURT OF AUSTRALIA

21 December 2016

RP v THE QUEEN

[2016] HCA 53

Today the High Court allowed an appeal from the Court of Criminal Appeal of the Supreme Court of New South Wales. The High Court held that the Court of Criminal Appeal erred in finding that the appellant's convictions were not unreasonable in circumstances where there was insufficient evidence to rebut the presumption that he, as a child of 11, did not know his behaviour was seriously wrong in a moral sense.

Relevantly, the appellant was convicted, after a trial by judge alone, of two counts of sexual intercourse with a child under 10 years. The complainant was the appellant's half-brother. At the time of the offending, the appellant was aged approximately 11 years and six months and the complainant was aged six years and nine months. A child under 14 years is presumed to lack the capacity to be criminally responsible for his or her acts. The only issue at trial was whether the prosecution had rebutted the presumption in the case of the appellant by proving that the appellant knew that his actions were seriously wrong in a moral sense. The first offence took place in circumstances where: there were no adults in the house; the appellant grabbed the complainant and held him down; the complainant was crying and protesting; the appellant put his hand over the complainant's mouth; and the appellant stopped the intercourse when he heard an adult returning to the house and told the complainant not to say anything. The second offence took place a few weeks later, in circumstances where: the appellant and complainant were again without adult supervision; the appellant took hold of the complainant; and the appellant stopped intercourse when he heard an adult returning. There was also evidence that, when the appellant was aged 17 and 18 years old, he was twice assessed as being in the borderline disabled range of intellectual functioning and was found by the trial judge to be of "very low intelligence". The trial judge held that the circumstances surrounding the first offence proved beyond reasonable doubt that the presumption was rebutted in relation to that offence. His Honour found that it logically followed that the presumption was rebutted in relation to the second offence.

The Court of Criminal Appeal dismissed the appellant's appeal against his two convictions. The Court unanimously held that the presumption was rebutted in relation to the first offence. A majority of the Court held that it was also rebutted in relation to the second offence, finding that the appellant's understanding of the wrongness of his actions in the second offence was informed by the finding that he knew his actions in the first offence were seriously wrong.

By grant of special leave, the appellant appealed to the High Court. The plurality of the Court found that in the absence of evidence of the environment in which the appellant had been raised or from which any conclusion could be drawn as to his moral development, it was not open to conclude that the appellant, with his intellectual limitations, was proved beyond reasonable doubt to have understood that his conduct was seriously wrong in a moral sense. The Court ordered that his convictions be quashed and entered verdicts of acquittal.

- *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.*

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