



HIGH COURT OF AUSTRALIA

11 October 2017

THE DIRECTOR OF PUBLIC PROSECUTIONS v CHARLIE DALGLIESH (A PSEUDONYM)
[2017] HCA 41

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Victoria. The High Court held that the Court of Appeal erred in concluding that, although the range of sentences indicated by current sentencing practices for the offence of incest was so low as to reveal error in principle, the sentence the subject of appeal before that Court was within that range and so ought not be disturbed.

Mr Dalgliesh was convicted on his plea of guilty of one act of incest (charge 1) and one act of sexual penetration of a child under 16 (charge 4) upon complainant A, and one act of incest (charge 2) and one act of indecent assault (charge 3) upon complainant B. At the time of the offending, A was aged between nine and 13 years and B was aged between 15 and 16 years. A and B are sisters, and their mother was, at the time of the offending the subject of charges 1 to 3, Mr Dalgliesh's de facto spouse. As a result of Mr Dalgliesh's act of incest upon A, she fell pregnant, and the pregnancy was later terminated. In respect of charge 1, the sentencing judge sentenced Mr Dalgliesh to three years and six months' imprisonment.

The Director of Public Prosecutions appealed, relevantly, on the ground that the sentence imposed on charge 1 was manifestly inadequate. Prior to the hearing, the Deputy Registrar of the Court of Appeal, at the request of that Court, wrote to the parties seeking submissions on the adequacy of "current sentencing practices" for the offence of incest, which is a matter to which sentencing courts in Victoria must have regard by virtue of s 5(2)(b) of the *Sentencing Act* 1991 (Vic). The Deputy Registrar advised the parties that the Court's "decision on the general question [would] not, of course, affect the outcome of the appeal". In Part A of its reasons, the Court of Appeal assessed the adequacy of Mr Dalgliesh's sentence by reference to current sentencing practices for the offence of incest, and concluded that the sentence, "though extremely lenient, was not wholly outside the permissible range". In Part B, the Court reviewed the sentencing information provided to it and concluded that "current sentencing does not reflect the objective gravity of such offending or the moral culpability of the offender". By grant of special leave, the Director appealed to the High Court, arguing that the Court of Appeal erred in elevating the significance of current sentencing practices so that they were determinative of the adequacy of the sentence imposed on charge 1.

The High Court held that, having reached the conclusion that current sentences were so manifestly disproportionate to the gravity of the offending and the moral culpability of the offender as to bespeak an error of principle, the Court of Appeal should have corrected the effect of the error of principle which it recognised. It was held that s 5(2) contemplates that current sentencing practices must be taken into account, but only as one factor, and not the controlling factor, in the fixing of a just sentence. Therefore the High Court allowed the appeal.

- *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.*