PARTIES:	THE QUEEN
	v
	LIDDLE, Timothy
TITLE OF COURT:	COURT OF CRIMINAL APPEAL
JURISDICTION:	CRIMINAL
FILE NOS:	No. CCA 1 of 1996
DELIVERED:	14 August 1996
HEARING DATES:	4 July 1996
JUDGMENT OF:	MARTIN CJ, ANGEL and MILDREN JJ

CATCHWORDS:

Criminal law and procedure - Crown appeal against sentence - Particular offences - Offences against the person - Abduction of children under 16 - Sexual intercourse without consent -

Criminal Code 1983 (NT) ss202(1) and (2), s192(3)

Criminal Code 1983 (NT) s414(1)

Criminal law and procedure - Sentencing - Gravity of offence - Sexual offence involving child - Deterrence and Retribution - Duty of Court to protect young children -

REPRESENTATION:

Counsel:

Appellant:	R Wild QC
Respondent:	C R McDonald

Solicitors:

Appellant:	Director of Public Prosecutions
Respondent:	Central Australian Aboriginal Legal Aid Service

Judgment category classification: B

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IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. CCA 1 of 1996

ON APPEAL FROM THOMAS J
SCC No. 27 of 1995

BETWEEN:

THE QUEEN
Appellant

AND:

TIMOTHY LIDDLE
Respondent

CORAM: MARTIN CJ, ANGEL and MILDREN JJ

REASONS FOR JUDGMENT

(Delivered 14 August 1996)

THE COURT: This is a Crown appeal as of right against sentence pursuant to s414(1) of the *Criminal Code NT*. The respondent pleaded guilty to two charges; first that he took a child under the age of 14 years out of the custody and protection and against the will of that child's mother and father, contrary to s202(1) and (2) of the *Criminal Code*, and,

secondly, that he had sexual intercourse with that child without his consent, contrary to s192(3) of the *Criminal Code*. On 20 December 1995, he was sentenced to two years' imprisonment with respect to the first charge and five years' imprisonment with respect to the second charge. The maximum penalty for the first count is seven years' imprisonment and the maximum penalty for the second count is life imprisonment.

The two sentences were ordered to be served concurrently and a non parole period of two years was fixed, both periods to commence from 14 December 1995.

The facts as charged by the Crown and admitted by the defence are as follows.

During the early morning of Friday 21 October 1994 the respondent borrowed his cousin's car, a maroon coloured Ford Falcon sedan, NT registration 337-828. He then drove alone around the streets of Alice Springs. At about 7.50 am he parked the vehicle in the car park area of the School of the Air section of the Braitling Primary School. He then walked from the car to the nearby gutter within the school grounds where he sat talking to three young boys approximately 5 years of age. One of these boys was the victim in this matter.

A short time later the respondent persuaded the victim to go with him in the car. The victim sat in the front passenger seat of the car whilst the respondent drove the vehicle out of the car park turning right onto Head Street and travelling north. He drove to a number of locations around Alice Springs including dirt roads off the Stuart Highway to the north. He stopped the vehicle on one of these roads and exposed his genitals to the victim. He then pulled down the pants of the victim and performed oral sex on him by taking his penis into his mouth. The respondent also rubbed the victim's anus.

After having detained the victim for approximately two hours the respondent drove to Sargent Street where he released him at about 10.10 am adjacent to a walkway which led back to the school. The victim walked back to his school whilst the respondent drove off, being apprehended shortly thereafter having been sighted by police driving from Woods Terrace onto Brown Street and then onto Smith Street.

The respondent was arrested, held in custody and later interviewed in relation to these matters. He was granted bail by a Magistrate to appear in court on 24 October 1994.

No permission was given to detain the victim or to interfere with him in any way. The victim is not related to the offender.

Kylie Rose Wright, the mother of the child, dropped him off at school as normal just after 8am and went to work. She was contacted at 9am and told her son was missing. The father of the child was contacted at work at about 8.25am with news that his son was missing. Both parents went to the school to assist police.

A school teacher patrolling the school grounds just after 8am had noticed a man walking with three children. It was later noticed that one of them was missing. The matter was reported and a full scale investigation commenced. The parents remained at the school until the child returned. Thereafter the child and the parents remained in company of police for some time as the child was interviewed. They went with police as the child attempted to show where he had been taken, and went to hospital where he was examined.

On the following day the child was again in company with police attempting to identify the offender from photographs and the car from a group of similar cars. Later a blood sample was taken from him.

On examination of the child the doctor found, first, the perineal area was mildly excoriated and the presence of gravel and a black substance was noted, secondly, gravel was noted

under the foreskin, thirdly, no bruising was noted, fourthly, there was no anal fissure or other evidence of anal penetration, the mouth and throat were normal with no evidence of injury, and, finally, a full screening medical examination was otherwise completely normal. Human semen and saliva were observed on the child's underpants which was consistent with having come from the respondent. It is apparent that the respondent ejaculated in the presence of his victim. There was no semen found on swabs taken from the perineal and foreskin areas.

The respondent was intercepted by police soon after leaving the child. He denied being involved. When later formally interviewed he answered some questions about ownership of the car and some of the articles in it, but declined to answer questions concerning the offence.

The learned sentencing Judge accepted certain matters stated in a statutory declaration of the mother of the child, including that he suffered frequent nightmares, increased bed-wetting, manifested signs of aggression and that she had noticed a change in the child from being happy and active to displaying a lack of interest and reticence to pursue his former outdoor activities.

The learned sentencing Judge said, inter alia:

"These are offences which our society rightly abhors and which understandably give rise to great concern by all parents for the safety and well-being of their young children.

The accused has no relevant prior convictions. The only matter on his record being a conviction imposed by the Court of Summary Jurisdiction in Darwin on 27 May 1987 for drive without due care and drive exceed .08.

The accused is 27 years of age. He was born in Melbourne Victoria on 30 December 1967. He has lived most of his life either in Alice Springs or Victoria. He has previously been employed with telecom in Victoria as an operator and with CAAMA as a radio announcer. In recent months he has been in receipt of unemployment benefits with some part-time singing work.

Mr Liddle has been examined by a consultant psychiatrist, Doctor Lester Walton. Doctor Walton has prepared a very detailed report dated 9 November which was tendered before the court and marked exhibit D1. And this report was read in its entirety by counsel for the accused, Mr Van De Wiel. I do make reference now to the final four paragraphs of this report and I quote:

> This man does exhibit somewhat deficient numeracy skills, but otherwise he is intellectually in tact and fundamentally is of normal intelligence. There is no evidence of alcohol or drug-related cognitive problems. There were no psychotic features.
>
> Mr Liddle is of the opinion that while he is plagued by continuing paedophilic ideas he believes he can now control these. He certainly impresses as being genuinely most concerned not to re-offend and he has a considerable capacity for empathy towards the child victim.
>
> Mr Liddle himself views imprisonment as proper punishment for his misbehaviour. All I would state in that regard is that imprisonment will serve no useful rehabilitative purpose.
>
> This man is not mentally ill. It does appear that his own sexual development has derailed. Fortunately Mr Liddle does not seem to be in the habit of recruiting unknown young males for his own sexual ends, that is, the abduction of a child for sexual gratification is out of character for him.

And that concludes my quote from the report of Doctor Walton.

I do take into account Mr Liddle's plea of guilty. He has spared the child and other persons the ordeal of attending court to give evidence. I accept he is genuinely remorseful and he has an understanding of the distress he has caused not only to the child victim of his offending, but also to the child's family and Mr Liddle's own very extended family in Alice Springs.

Mr Liddle has been frank in his admissions in respect of the offences. He is well aware that he will have to endure the disgrace he has brought on himself and his own family and the widespread adverse publicity that a case of this nature inevitably attracts.

The report prepared by Dr Walton indicates Mr Liddle has considerable insight in to his problems and the hurt that his behaviour has inflicted. I accept that Mr Liddle has a genuine desire to seek some assistance to address his problem and that his own efforts and the obvious strong support he has from members of his own family will be of great assistance in his rehabilitation.

Mr Liddle has already voluntarily attended some 38 sessions at the Mornington Centre in Victoria. Mr Liddle's rehabilitation is not only in his own best interests but in the best interests of the whole community who are entitled to protection from such serious offending. Accordingly I am imposing a sentence to take account of the aspects of specific and general deterrence.

The sentence should be appropriate to the very serious nature of the offence but not so crushing that it effectively destroys the incentive for rehabilitation. Counsel for the defence has called evidence from Mr Liddle's mother and his aunt and provided this court with very complete details of Mr Liddle's background.

I am aware of some of the difficulties Mr Liddle has experienced in his own life, in particular the distress he experienced at the separation of his own parents and the fact that he himself suffered sexual abuse as a child."

Her Honour also said:

"Nothing can detract from the seriousness of this offence, the distress it has caused to the victim and to his parents and the fear and revulsion that such an offence engenders in the community. Our society places

> great stress on the need to protect its children. The courts have an important role to play in the protection of our children in the community.
>
> The aspect of the specific and general deterrence is very important. These factors must be balanced with the considerations relevant to rehabilitation of the accused. I do take into account the efforts the accused has already made to seek appropriate sexual counselling and the insight he obviously has into the effects of his criminality."

The primary submission of counsel for the Crown was that the learned sentencing Judge erred in imposing sentences which were manifestly inadequate in all the circumstances of the case.

No specific error of principle was assigned nor was it suggested that her Honour's remarks displayed a misunderstanding or wrong assessment of the material before her. In those circumstances counsel for the respondent naturally relies upon the well known and accepted authorities governing consideration of Crown appeals against sentence, such as *R v Tait and Bartley* (1979) 24 ALR 473 and in this Court, *R v Mulholland (1991)* 1 NTLR 1 at pp8 and 9 and *R v Ah Sam*, 15 March 1995, unreported. In particular, it was put on behalf of the respondent that the Crown's presentation of the case before her Honour in some way contributed to the error alleged by the Crown upon appeal. We do not accept that there was any such error on the part of the learned prosecutor. There was an adequate presentation of the facts and reference was made to appropriate principles of sentencing for a case

such as this. The learned prosecutor drew her Honour's attention to the fortunately few cases in this jurisdiction of recent years having to do with sexual assaults upon children. None were comparable; none involved a conviction for abduction as well as for the assault; none carried a maximum penalty of life imprisonment, and in some cases the offenders had relevant prior convictions. However, those cases amply demonstrated that in the view of this Court deterrence and retribution are more important than rehabilitation. No new basis for sentencing was put forward for consideration on appeal. (See generally *R v Tait and Bartley* at pp476-477). Counsel for the respondent before her Honour suggested that the cases referred to demonstrated a "high water mark" arising from "extreme examples". It is possible that her Honour was thus persuaded. But we do not agree in any event. There were many distinguishing features between those cases and this, although the principle of sentencing to be applied remains constant.

We are of the opinion the net head sentence in this case and the non parole period are manifestly inadequate. We are particularly of the view that the sentence of two years' imprisonment for the criminal abduction count was manifestly inadequate, taking into account the age of the victim, the fact that the abduction was for a sexual purpose, the plain duty upon the courts to protect young children from abduction

and from sexual attacks, the wanton and calculated conduct of the respondent in setting about and affecting the abduction, the brazen nature of the abduction - in daylight from a school, the lengthy detention of the child - about two hours, the trauma to the victim and his parents and the school authorities, and the primary importance of the sentencing factors of deterrence, both personal and general, and retribution and condemnation called for in dealing with offending of this type. Significant though some of the personal subjective rehabilitative aspects relevant to the respondent may have been, they can not be allowed to cheat justice. We are of the view the serious nature of these offences is not adequately reflected in the net head sentence imposed and non parole period fixed, and that they were so inadequate as to manifest error.

The appeal should be allowed and the sentences set aside. In lieu thereof we would fix the following sentences: in respect of count 1, that the respondent took a child under the age of 14 years out of the custody and protection and against the will of that child's mother and father, contrary to s202(1) and (2) of the *Criminal Code NT*, four years' imprisonment; in respect of count 2, that the respondent had sexual intercourse with that child without his consent, contrary to s192(3) of the *Criminal Code NT*, six years' imprisonment.

There was some argument as to whether it was appropriate to order that the sentences be concurrent. The second offence was committed in consequence of the abduction. As we have said, the abduction was for sexual purposes. We see no error in the learned sentencing Judge ordering that the sentences with respect to these offences be served concurrently. We so order in respect of the sentences we impose. We fix a non parole period of three years.

We are of the opinion that the provisions of the *Sentencing Act* which came into operation on 1 July 1996 do not apply to the sentence substituted by this Court (see s130(5)). It was not the intention of the legislature that a person sentenced prior to 1 July 1996 should have different considerations apply upon a review of the sentence on appeal being dealt with after that date. Nor do we consider that the repeal of s92 of the *Prisons (Correctional Services) Act* applies to entitlement to remission prior to that date (see s10(1) *Prisons (Correctional Services) Amendment Act No 2 1994).*

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