



District Court
New South Wales

Case Name: R v MG

Medium Neutral Citation: [2016] NSWDC 374

Hearing Date(s): 8 August 2016

Decision Date: 2 December 2016

Jurisdiction: Criminal

Before: Colefax SC DCJ

Decision: Accused found not guilty on the grounds of mental illness

Catchwords: Sexual intercourse with a child above the age of 10 and under the age of 14 years, in circumstances of aggravation, the complainant had a cognitive impairment – accused and complainant in a learning support stream – procedural protocol by the Department of Education – Court’s concerns about that protocol and bail issues.

Legislation Cited: Section 21 (3) of the Mental Health (Forensic Provisions) Act.

Category: Principal judgment

Parties: Regina (Crown)

GM - Accused

Representation: Mr Macintosh (Crown)

Mr A. Webb of Counsel (Accused)

File Number(s): 2014/15386

Publication Restriction: Non publication order made regarding the names of the victim and the accused or any other thing that might

otherwise identify the victim or the accused, including any pictorial representation

JUDGMENT

- (1) On 8 August 2016 I undertook a Special Hearing within the meaning of s 21 (3) of the Mental Health (Forensic Provisions) Act. And on 12 September 2016 I found the accused not guilty on the grounds of mental illness.
- (2) The accused, at the time of the events with which the Special Hearing was concerned, was a child in a learning support stream in a New South Wales high school. The complainant was also a child in that learning support stream.
- (3) The allegation against the accused was that on 18 February 2014 he had sexual intercourse with the complainant, a child above the age of ten and under the age of fourteen years, in circumstances of aggravation, namely that the complainant had a cognitive impairment.
- (4) The incident giving rise to that charge was brought to the attention of the school principal.
- (5) In the Special Hearing, the principal was called to give evidence and, in that evidence, he outlined a procedural protocol promulgated by the Department of Education which he implemented.
- (6) The terms of the protocol are not in evidence. But it is sufficient for my purposes to note that, once aware of the complaint, the principal interviewed the accused - who was a child with an intellectual impairment, without a parent being present, and without providing the child with an opportunity to obtain legal advice to prevent him incriminating himself in relation to a matter which, in all probability, would involve the police.
- (7) In the interrogation of the child which then followed the principal obtained admissions of wrongdoing by the child. Those admissions of wrongdoing were subsequently provided by the principal to the police.
- (8) In the subsequent interrogation of the child by the police the child's father was present. That gentleman has very limited capacity to speak English and in that interview further admissions were extracted from the child.
- (9) This whole process I found concerning. At one level, the problems might have been addressed if there had been an objection taken to the adducing into evidence of any part of these admissions. If there had been an objection, it is highly likely that I would have rejected the evidence.
- (10) But that really is beside the point. The point is that there appears to be a protocol in place in NSW schools which permits not only interrogation of children without adults present, but the interrogation of children with

learning difficulties – the result of which are made available to the Police.

- (11) Regrettably this is not the only matter revealed by the Special Hearing which has been of concern to the court.
- (12) Another matter concerns how the child was dealt with in the context of being granted bail. The child's father cannot read English. The child, as I have said, was in a learning support stream at a high school. The most basic of inquiries by the police would have revealed that the child was effectively illiterate. Neither the child nor his father were able to read the bail slip, nor did they understand the conditions of bail.
- (13) In the result, the child and his father did not understand the reporting condition and the child was subsequently breached and arrested. There is evidence before the court that, as a result of that breach and subsequent arrest, the child experienced suicidal ideation.
- (14) This should never have occurred.
- (15) There is nothing more that the court can do, apart from highlighting these issues and making them public in the hope that appropriate authorities will address them.

Amendments

02 February 2017 - Decision date varied

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