

***Director of Public Prosecutions v Dalglish (a pseudonym)* [2017] HCA 41 (11 October 2017) – High Court of Australia**

‘Crown appeal against sentence’ – ‘Current sentencing practice’ – ‘Instinctive synthesis’ – ‘Manifestly inadequate’ – ‘Sentencing’ – ‘Worst category of case’

Charges: Incest x 2; Sexual penetration of a child under 16 x 1; Indecent assault x 1.

Appeal type: Crown appeal against sentence.

Facts: The charge subject of the appeal was one count of incest. The appellant pleaded guilty, and was sentenced to 3 years and 6 months’ imprisonment. The total head sentence was 5 years’ and 6 months’ imprisonment with a non-parole period of 3 years ([12], [23]).

Section 5(2)(b) of the Sentencing Act 1991 (Vic) provided that the court must have regard to current sentencing practices when sentencing an offender. The Court of Appeal stated that ‘but for the constraints of current sentencing practice’, it would have imposed a longer sentence ([33]).

Issues: Whether the sentence for the charge of incest was manifestly inadequate. In resolving this question, the High Court clarified the relevance of ‘current sentencing practices’ to sentencing.

Decision and Reasoning: The appeal was allowed, and the matter was remitted to the Victorian Court of Appeal for determination of the appeal against sentence ([77]). The High Court (Kiefel CJ, Bell and Keane JJ, Gageler and Gordon JJ agreeing) held that the Court of Appeal erred by treating the range established by current sentencing practices as decisive of the appeal before it ([2]).

Kiefel CJ, Bell and Hayne JJ stated: ‘the terms of s 5(2) are clear such that, while s 5(2)(b) states a factor that must be taken into account in sentencing an offender, that factor is only one factor, and it is not said to be the controlling factor’ ([9]).

Further, their Honours stated at [50]:

section 5(2)(b) of the Sentencing Act informs the process of instinctive synthesis as a statutory expression of the concern that a reasonable consistency in sentencing should be maintained as an aspect of the rule of law. Reasonable consistency in the application of the relevant legal principles does not, however, require adherence to a range of sentences that is demonstrably contrary to principle.