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THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

JUDGE G H T ARMITAGE

MONDAY 11 APRIL 2005

04/31/0056 - REGINA v JAMES PATRICK FLETCHER

SENTENCE

MN: 379869 Parklea C.C

NON PUBLICATION ORDER RELATING TO VICTIM'S NAME

HIS HONOUR: On 6 December 2004 in the District Court at East Maitland, James Patrick Fletcher, a Catholic priest then aged sixty-three was found guilty by a jury of one charge of committing an act of indecency towards AH , a person then under the age of sixteen years, namely thirteen years, and he was under the authority of James Patrick Fletcher. The maximum penalty fixed by the legislature for that offence was imprisonment of four years. He was also found guilty of eight charges of having homosexual intercourse with AH a male then between the ages of ten and eighteen years. The maximum penalty fixed by the legislature for each of those offences was imprisonment for ten years. The offences were committed between 15 December 1989 and 31 December 1991 when the victim was aged between thirteen and fifteen years. Three of the charges of homosexual intercourse alleged that the offender had intercourse with the victim by placing his penis in the victim's mouth. One charge of homosexual intercourse alleged that the offender had intercourse with the victim by placing the victim's penis in his mouth. Four charges of homosexual

intercourse alleged that the offender penetrated the victim's anus with his penis.

It was the Crown case that the victim AH was born at Waratah on 28 June 1976. He grew up in the Clarence Town, Dungog, Maitland area, where he lived with his mother and father and younger brothers. The family were Catholics and were heavily involved in the church. The victim first came into contact with Father Fletcher when he arrived at Dungog in the late eighties as the new parish priest at Dungog and Clarence Town. At that time the victim was an older boy. It was the victim's evidence at the trial that he had a lot of contact with Father Fletcher as an older boy, and that Father Fletcher became very close to the family, in particular to his mother. The family attended church every Sunday and Father Fletcher had dinner at the victim's home on a regular basis. On occasions the victim travelled with Father Fletcher in his car to act as an altar boy at the Dungog church. In 1989 the victim started at St Peters High School at Maitland and on occasions he saw and spoke to Father Fletcher at school when they discussed such things as the victim's family and how he was getting on at school. The victim's evidence which I accept is that Father Fletcher on occasions asked him if he was interested in girls.

The facts of the first charge of the indictment, the charge alleging the commission of an act of indecency, are that on one of the trips to Dungog, when the victim was between year 7 and 8 and was aged thirteen, Father

Fletcher asked him if he ever got "erections" or "stiffies". The victim replied "Yes I had one the other day" to which Father Fletcher replied "It's normal to get stiffies". Father Fletcher then asked "Have you ever masturbated?" upon which he unzipped his fly, pulled out his penis and began playing with it as he drove towards Dungog. Father Fletcher went on to say "It's normal, why don't you try it". The victim's evidence is that he did what was suggested to him. He unzipped his fly and started to play with himself. He said he felt very uncomfortable about it. He said to Father Fletcher "It won't go hard" to which Father Fletcher replied "That's all right, just keep on playing". The victim thinks that conduct went on for about ten minutes, during that time Father Fletcher said to him "This is our special time together". It is the victim's evidence that on arrival at Dungog they went into the church and did the altar service. He said he is pretty sure that on that occasion his father picked him up and drove him home. It is the victim's evidence that following that incident Father Fletcher spoke to him at school, said that what they had done was a normal part of life and told him not to speak to anyone about it.

The facts of the second charge of the indictment are that in March of 1990, the victim's mother had a fortieth birthday party. Father Fletcher was there and he spoke to the victim making him feel very special. On an occasion during that same month he offered to give the victim a lift home. He picked him up at the Bishop's chancellery

and drove to the traffic lights at Maitland. He then said to the victim "Have you ever seen the Walka Water Works?" the victim replied "No". Father Fletcher asked "Do you want to?" to which the victim replied "Yes". They then drove to the car park at the water works, which the victim described as "a rural sort of area quite isolated". On arrival there Father Fletcher asked the victim if he knew what an orgasm was, to which he replied "No". Father Fletcher asked if he had heard of a "head job". The victim replied that he had. Father Fletcher then unzipped his trousers and took out his penis which was erect. He told the victim to start slowly then go faster and faster. He pulled the victim towards him and the victim put his mouth on Father Fletcher's penis and started sucking it. Father Fletcher said "That feels really good". He told the victim to go up and down. According to the victim it went on for somewhere between ten minutes and half an hour. Father Fletcher said "It's coming, it's coming". The victim did not know what he meant. Father Fletcher then ejaculated into the victim's mouth. According to the victim it was hot and it tasted awful. He opened the passenger's door, spat it out and dry retched. Father Fletcher wiped himself down with a handkerchief and after a short time he drove the victim home. It was the victim's evidence that Father Fletcher approached him at school the next day and asked him if he was all right, and if he had told anyone. He said that no one was to know.

The facts of the third charge on the indictment are that about three weeks later the victim saw Father

Fletcher at school, he again drove the victim to the water works where the victim again sucked his penis. Father Fletcher again ejaculated and again the victim spat it out. It was then that Father Fletcher told the victim that if he did tell anyone no one would believe him because he was a priest. He then drove the victim to Maitland where his father picked him up. It was the victim's evidence at the trial that in April a similar incident took place at the water works and a little later in late April or early May another similar incident took place. Those alleged incidents are not the subject of charges in the indictment.

The facts of the fourth charge on the indictment are that late in June Father Fletcher asked the victim if he wanted a lift home, on that occasion instead of going to the water works they drove to a park at Patterson. On arrival there Father Fletcher said "I'd like to make you orgasm", the victim said "Yes". Father Fletcher began to fondle the victim's penis and genitals while they were sitting in the car. He then lent over and sucked the victim's penis. According to the victim he became irritable when the victim's penis did not become erect. The victim said "Stop it's hurting", Father Fletcher became angry, he appeared to be frustrated, he said "I know how I could make you orgasm, we could have sex". He went on to say that he would put his penis into the victim's anus and would rub it back and forth. The victim said in evidence that he trusted Father Fletcher and that he agreed to his suggestion.

The facts of the fifth charge on the indictment are that the victim then lent onto the front seat on the passenger's side and that Father Fletcher had one leg out of his trousers. He put a hand around the victim's waist and moved towards him. The victim's evidence is that he had never felt pain like it in his life. Father Fletcher tried three or four times to put his penis into the victim's anus, then succeeded in putting it in. It was incredibly painful and Father Fletcher kept thrusting in. The victim clenched the seat and looked at the St Christopher medal in the car. Father Fletcher was huffing and puffing and he said "This is good". After five or ten minutes he ejaculated into the victim, he then said to the victim "Look at your penis, it's erect". The victim said that he looked and saw that it was erect. The victim cried and Father Fletcher hugged him and cuddled him and said "It's all right". They then both put their pants back on and talked, in the course of which Father Fletcher again told the victim that it was a normal part of life. They then drove into Patterson where Father Fletcher bought one can of Coca Cola from which the victim had a sip. It was following that incident the victim said that Father Fletcher told him that if he told anyone, no one would believe him because priests never lie. He also told the victim that if he did tell anyone, he Father Fletcher would hurt his brothers. It was the victim's evidence that Father Fletcher dropped him off in Maitland from where he caught a bus home, he there found that he was bleeding from the anus. He said in evidence that he

was very scared about what had happened. The following day he threw away his underpants, he said he felt sore for about a week.

It was the victim's evidence that he next saw Father Fletcher about a week later when his attitude had changed and he did not have much to say to the victim. The victim's evidence was that in July or August Father Fletcher again took him to the water works where he sucked Father Fletcher's penis. That alleged incident is not the subject of a charge on the indictment.

The facts of the sixth charge on the indictment are that two or three weeks later the same thing occurred again. Again Father Fletcher told the victim not to tell anyone.

The facts of the seventh charge on the indictment are that in November 1990 the victim's grandfather had his eightieth birthday, he lived in Adamstown. Father Fletcher knew that a party was to be held and asked the victim why he had not been invited. The victim told him where the party was to be held and Father Fletcher asked the victim if he would be able to get away from the party to see him. The victim said he could. The victim attended the party and he and others played cricket until it was dark, then continued to play with the lights on. As they played the victim saw Father Fletcher's car drive past his grandfather's house, he saw the number plate JPF-004. His evidence is that he chased a tennis ball down the road then "basically disappeared". He approached Father Fletcher's car, opened the door and got in, they

then drove to St Pius IV High School, a couple of kilometres away where they got out. Father Fletcher said "This is Fletcher Street", the victim said "Yes the same as your name". Father Fletcher said "Let's have sex in Fletcher Street". At that point they were walking on the grass beside the road, they went to where there was a big tree, Father Fletcher then knelt behind the victim who was on all fours, and put his penis into the victim's anus. He said to the victim "How are you feeling, and are you ready for this?" The victim said in evidence "It was just terrible". After five or ten minutes Father Fletcher ejaculated, they then pulled their pants up and walked back to the door where Father Fletcher said "We better get you back before someone sees you are missing". He then drove off and let the victim out a couple of streets away from his grandfather's house. It was the victim's evidence that as a result of that incident he found himself to be bleeding again and he felt sore. There was blood on his underclothes. The following day he saw Father Fletcher at church.

The facts of the eighth charge on the indictment are that in 1991 the victim's parents were going on a holiday, and his nan was coming to look after him. Father Fletcher according to the victim knew of this and about two weeks before the parents left spoke to the victim and asked if he could meet him. The victim said he could after his brothers had gone to bed. He made an arrangement to meet Father Fletcher on what he thought was a Saturday night. He got on his bike and rode about two kilometres to the

river where there is a heavily treed area. Father Fletcher was already there. The victim got into the passenger's seat, they talked and Father Fletcher said "Are we going to have anal sex again?" to which the victim replied "Yes". He said he gave that reply because he was confused. He did not know if he loved Father Fletcher or if Father Fletcher loved him. He did not know that what they were doing was not normal. It was the victim's evidence that on that occasion at the back of the car, Father Fletcher put his penis into the victim's anus. Again he ejaculated and again he said "Look your penis is erect". He added "You must have enjoyed it". The victim then rode his bike home standing up. It was the victim's evidence that after that incident during 1991, he performed oral sex on Father Fletcher at the water works. Those alleged incidents are not the subject of charges on the indictment.

The facts of the ninth charge on the indictment are that on an occasion towards the end of 1991 Father Fletcher picked the victim up from school and drove to the same place at Patterson. He told the victim that they were going to have anal sex again. It was the victim's evidence that they did so in the same position as on the first occasion. It was the victim's evidence in 1992 and 1993, on a number of occasions he performed oral sex on Father Fletcher, those alleged incidents are not the subject of charges on the indictment. It was his evidence that in March 1994 he was trying to study for the HSC, it was then that he told Father Fletcher that he wasn't going

to do it anymore. Father Fletcher became very angry and told him that if he told anyone, no one would believe him.

I note at this point that I accept the evidence of the victim as to the circumstances in which the offences charged on the indictment were committed. He appeared to me to be a down to earth young man who was completely truthful, and who was endeavouring to do his best to tell his story without elaboration.

I turn to the subject features of the case. The offender is now aged sixty-three, having been born on 20 November 1941. I have been informed by Mr Barker of Queens Counsel that his client maintains his innocence. I have heard no evidence from the offender, nor have I heard any oral evidence called on his behalf. The only documentary evidence before me on sentence is a report of Dr Eric Fisher dated 4 March 2005. In that report Dr Fisher says that he visited the offender at the Long Bay Hospital on the morning of 4 March and interviewed and examined him. He told Dr Fisher that he had been relatively well in gaol, and that he was waiting to have a bilateral inguinal hernia repaired. He said that was a worry to him. According to Dr Fisher he is still emotionally labile and weeps a lot. He has some trouble controlling his balance, especially after sitting for a time, because of clumsiness in the left leg. His medical record suggested to Dr Fisher that he had evidence of an old myocardial infarct on his ECG. His past history was of cerebral haemorrhage in 1996, and mild sensory neural deafness. It is Dr Fisher's opinion that the offender has

some permanent damage from that previous cerebral haemorrhage and the brain damage sustained.

Mr Barker in the course of his submissions referred me to various authorities in which substantial penalties were imposed on appeal from the District Court to the Court of Criminal Appeal. He has sought to point to features of those cases which he submits placed them into a category of seriousness far greater than that of this present case. In **The Queen v Ryan (2)**, 2003 NSWCCA 35, 27 February 2003, the offender a Catholic priest was sentenced initially in the District Court on 30 May 1996 before Judge Rummery for eleven sexual offences against young boys with nine further offences taken into account. He was sentenced to six years imprisonment with a minimum term of four years, and an additional term of two years. As a result of the publicity surrounding those proceedings, three further victims came forward. The offender admitted having committed offences against them and he volunteered information about a substantial number of matters involving previously unknown victims. As a result he was charged with fourteen additional offences involving twelve separate victims. He pleaded guilty and admitted a further thirty-nine offence which he asked to be taken into account. Those offences involve some of the victims who were the subject of the charges in the indictment as well as a further sixteen victims. The fifty-three offences were committed in the Newcastle area over a period of about twenty years, between 1972 and 1991. Most occurred between 1972 and 1984. Allegations

made by the complainants included the fondling of genitalia, masturbation and fellatio. There were two occasions on which the offender asked complainants to participate in anal intercourse, although there was no anal penetration. The victims were aged between six and fourteen at the time of the offences. Each was a boy in the offender's congregation, some of them being altar boys or servers. The offender was trusted and respected by the victims and their families.

On appeal, sentences imposed by Judge Nield were reduced from fifteen years to fourteen years, and the non parole period from eleven years to ten years. When those sentences were added to those imposed by Judge Rummery, the offender was subject to sentences of imprisonment effectively totalling twenty years and non parole periods totalling fourteen years. The Court pointed out that the offender's "otherwise good character", was only a small factor to be weighed in his favour.

Mr Barker seeks to contrast the number of offences and the number of victims in that case with the nine offences and one victim, the subject of these present proceedings. Mr Barker also referred me to **The Queen v Dunn** 2004 NSWCCA, 346. In that case the offender who pleaded guilty was sentenced in the District Court by Judge Finnane for twenty-seven offences, including eleven offences of homosexual intercourse with a male person between the ages of ten and eighteen years. For each offence he was sentenced to imprisonment for eight years with a non parole period of six years. In nine of those

offences the allegation was fellatio, in two offences it was anal intercourse. The offender was also sentenced for three offences of homosexual intercourse with a male person under the age of ten years, for each of which he was sentenced by Judge Finnane to imprisonment for fifteen years with a non parole period of seven and a half years. In addition to those matters the offender was sentenced for one charge of sexual intercourse with a person between the ages of ten and sixteen years, two charges of attempted homosexual intercourse with a male person between the ages of ten and eighteen, two charges of indecent assault, three charges of committing an act of indecency with or inciting an act of indecency by a person under the age of sixteen years, two further charges under a different section of the **Crimes Act** of inciting an act of indecency by a person under the age of sixteen years, and three charges of supplying a prohibited drug. Most of the sentences imposed by Judge Finnane commenced on 10 November 1997, the date on which the offender was taken into custody, although there was a partial accumulation. The effect of those sentences was a total term of imprisonment of thirty-three years commencing on 10 November 1997 and expiring on 9 November 2027, with non parole periods totalling twenty-two and a half years commencing on 10 November 1997 and expiring on 9 May 2020. The offences to which the offender pleaded guilty were committed over a period of about seven years from 1985 to 1992, and involved eight victims. On appeal the Court Justice of Appeal Handley and Justices James and Howie

observed that it was apparent that Judge Finnane had found that the offenders pleas of guilty were late pleas of guilty. They conceded that he was entitled to make that finding but they stated that the pleas nevertheless had a purely utilitarian value, and that a discount of at least ten per cent should have been allowed. It appears that Judge Finnane did not quantify any discount he may have allowed. A complicating feature in **Dunn's** case was the fact that an offender named Hill had been sentenced in 1991 by Justice Loveday. Hill had pleaded guilty to twenty-three offences, including eight offences of homosexual intercourse with a person between the ages of ten and sixteen years and one offence of homosexual intercourse with a child under the age of ten years. Those offences were committed between 1987 and 1991. The Court of Criminal Appeal in **Dunn's** case noted that Justice Loveday had adopted the practise followed in this state before **Pearce v The Queen** 1998, 194 CLR 610, of reflecting the total criminality in all the offences in the sentence imposed for the most serious offence, the offence of homosexual intercourse with a child under the age of ten years, and imposing fixed terms of imprisonment or penal servitude for all the other offences which were to be served concurrently with parts of the minimum term for the principal offence. For the offence of homosexual intercourse with a child under the age of ten years, Justice Loveday sentenced Hill to sixteen years with a minimum term of twelve years commencing on 10 March 1991, the date Hill had gone into custody. An appeal to the

Court of Criminal Appeal against the severity of those sentences was dismissed. In **Dunn's** case Judge Finnane sought to distinguish Hill's case on the grounds that Hill was sentenced in 1991. He pleaded guilty at the outset. The offences were not as numerous as in **Dunn's** case, and the circumstances in which they were committed were not the same. The Court of Criminal Appeal had reservations concerning some of the matters relied upon to distinguish Hill's case. They came to the view that:

> "Hill's case was a case of which his Honour should have had particular regard". And that "The sentences imposed on the applicant were outside the range of sentences indicated by such cases as AB, Fisk, Bell, Allan and Hill".

The Court went on to say that some allowance would have to be made for the utilitarian value of the applicant's pleas of guilty and his ill health. In view of his age, he was sixty-three at the time, they thought it unlikely that he would re-offend after serving lengthy prison sentences. The Court went on to observe that the sentences it was about to impose were not to be taken as a guide to what would not be appropriate for an offender who committed similar offences in more recent years as sentences have increased since 1992. The Court also observed that it was constrained in determining the appropriate sentences for **Dunn** by the sentences imposed upon Hill, having regard to the close association between the two offenders and their criminal conduct. As to the manner in which the sentences should be formulated, the Court said this:

"In re-sentencing the applicant, fixed terms of

> imprisonment should be imposed for most of the offences, because if a sentence containing a non parole period and a parole period was set, the parole period would be subsumed in a non parole period or the fixed term of some longer sentence or sentences. There was no necessity as Judge Finnane thought to set a non parole period for every one of the sentences. In accordance with sentencing principles, a fixed term of imprisonment is imposed, the fixed term will be equivalent not to the total term of a sentence containing a non parole period and a parole period, but merely to the non parole period of such a sentence".

The Court proceeded to impose various sentences, including a fixed term of imprisonment of five years for each of two offences of penile anal intercourse with a male person between the ages of ten years and eighteen years, of which the maximum penalty was imprisonment for ten years. Those sentences to be served concurrently with each other, and fixed terms of imprisonment of four years for each of the nine offences involving some form of fellatio with a male person between the ages of ten years and eighteen years. Those sentences to be served concurrently with each other. The Court stated that the total effect of the sentences was that the offender was sentenced to terms of imprisonment totalling twenty years with fixed terms of imprisonment and the non parole period of the sentence imposed on count 10 (a charge of homosexual intercourse with a male person under the age of ten years), totalling eighteen years. It is Mr Barker's submission that the totality of the criminality exhibited by the offender Dunn far exceeds that of Father Fletcher.

In addition to the cases of **Ryan**, **Dunn** and **Hill**, Mr Barker has referred me to the cases of **The Queen v AB**, unreported, CCA, 7 July 1997, **The Queen v Fisk**,

unreported, CCA, 21 July 1998, **The Queen v Bell**, unreported, District Court, Judge Davidson, 12 February 1999, and **The Queen v Allan**, unreported, District Court, Judge Phelan, 7 November 2000. They are all cases in which the offender committed very many offences, in the case of AB, sixty-seven offences for which minimum terms of imprisonment were imposed, ranging from nine years in the case of Fisk to thirteen years in the case of Hill. Mr Barker points out that in **Fisk's** case, fifteen children were involved, aged from nine to eleven, and that the offences were committed over a ten year period. In **Ryan's** case, one of the victims was aged six. In **Bell's** case, he was convicted of forty-four offences, to some of which he pleaded guilty, and thirty-one similar offences were taken into account. He was sentenced to a minimum term of ten and a half years. Allan for twenty-six offences, including ten of buggery committed between 1966 and 1999, the eleven victims being aged between ten and thirteen years, was sentenced to a minimum term of nine and a half years. It is Mr Barker's submission that those cases demonstrate that it is for offences far more serious than those committed by Father Fletcher, that non parole periods of nine to thirteen years are appropriate.

Mr Barker also relies upon comments made by Justice McHugh when **Ryan's** case went to the High Court on the question of the appellant's "otherwise good character". At para 54 Justice McHugh said:

> "No doubt it is legitimate to take into account many matters that are personal to the offender and that will have consequences on that

> person's future life. It is legitimate for example to take into account that the conviction will result in the offender losing his or her employment or profession, or that he or she will forfeit benefits such as superannuation".

Justice McHugh went on to say that he was not convinced that public opprobrium was to be treated as equivalent to the loss of a job or similar personal or financial loss. Mr Barker submits that in this case the offender has no funds and to no order to give him assistance. He submits that I am entitled to take that into account.

There was no specific evidence before me as to those matters, nevertheless it would seem that it is almost inevitable that what Mr Barker submits is the case is indeed the case. That being so I accept Mr Barker's submission and I intend to take those matters into account. Mr Barker further submits that I am entitled to take into account the public opprobrium to which the offender will be subjected. He relied upon remarks made by Justice Kirby in **Ryan's** case, that it is appropriate to take account of the particular features to which such a prisoner is exposed, including the additional opprobrium, adverse publicity, public humiliation and personal, social and family stress which he suffered.

The Crown Prosecutor relies upon what Justice McHugh said at para 55 of **Ryan's** case:

> "The worse the crime the greater will be the public stigma and opprobrium".

The prisoner who rapes a child will undoubtedly be subject to greater public opprobrium and stigma than the

prisoner who rapes an adult person, but without the benefit of full argument on the issue, I do not see why the objectively appropriate sentence for raping a child should be reduced by reason of any public opprobrium or stigma that the prisoner might suffer. It was the Crown Prosecutor's submission that I should not take into account as a matter entitling the offender to the reduction of objectively appropriate sentences, any public opprobrium of stigma that the offender might suffer. I accept that submission.

The Crown Prosecutor has further submitted that the fact that the charges for which the offender has been convicted relate to one victim only is not of itself a mitigating factor. I accept that submission. Obviously if an offender is guilty of committing serious sexual offences against more than one victim the totality of his criminal conduct is more heinous than if he had committed fewer offences and those offences were confined to one victim. That is not the same as saying that in a case such as this the nine offences committed by the offender are somehow less deserving of punishment because there was on victim only.

It has been submitted by Mr Barker that his client is at the moment virtually in solitary confinement. As I understand it his submission is that that is likely to continue and that it should be taken into account by me when imposing sentence. The Crown Prosecutor's response to that submission is that there is no evidence before me as to the nature of the offender's confinement, and that I

should not accept it has been or will be more onerous than that suffered by any other inmate. It is true that there is no evidence before me, nevertheless it is a matter of common knowledge that sex offenders are more vulnerable than most other members of the prison community. I am not prepared to accept that Father Fletcher will remain virtually in solitary confinement, however I do accept that he will almost inevitably be subject to some sort of protection, and that as a result his time in custody will be to some degree more onerous than it otherwise would have been.

In imposing sentence I have regard to s 3A of the **Crimes (Sentencing Procedure) Act** 1999, and in particular the requirement that the offender be adequately punished for the offences, that his conduct be denounced, and that others be deterred from committing similar offences. I think it highly unlikely in all the circumstances that there is any real need to deter the offender himself. I also have regard to s 21A of the Act, and the aggravating and mitigating factors referred to therein. The aggravating factors present in this case are those stated at subs (2)(k)(l)(m) and (n). The offender abused a position of trust in relation to the victim. The victim because of his age and because of the particular relationship that existed between himself, his family and Father Fletcher was vulnerable. The offences involved a series of criminal acts committed over a period of almost two years, and the offences the subject of the charges were not isolated incidents. The offences were in my view

to some extent planned. The offender ingratiated himself with the victim's family and with the victim for the specific purpose of taking advantage of him for the purpose of sexual gratification.

The mitigating factors present are those stated in subs (3)(e)(f) and (g). The offender does not have any record of previous convictions. He was a person of good character. He is unlikely to re-offend, mainly because of his age and the length of time he will spend in custody. I note that Father Fletcher has not in any shown or expressed remorse, and that he maintains his innocence. It is the Crown Prosecutor's submission that for those reasons rehabilitation is not a matter that requires consideration. Mr Barker has not made a submission to the contrary. However that may be, I am unable to make an affirmative finding that Father Fletcher has good prospects of rehabilitation. As to whether substantially emotional harm was occasioned to the victim, again I am not able to make an affirmative finding that it was. Mr Barker relied upon the fact that no victim impact statement was tendered in evidence. The Crown relies upon s 29(3) of the **Crimes (Sentencing Procedure) Act** 1999, which provides:

> "The absence of a victim impact statement does not give rise to an inference that an offence had little or not impact on a victim".

I certainly draw no inference that the offences committed on the victim had little or no impact on him. It is apparent from evidence he gave at the trial that some of the offences committed upon him, in particular the

first offence of anal intercourse, had an immediate and very unpleasant effect upon him. Nevertheless there is no evidence which would entitle me to find that emotional harm caused by the offences were substantial. In imposing sentence I have regard to the objective seriousness of the offences. It is plain from the evidence given at the trial by the victim that the offender set out on a deliberate course to ingratiate himself with the victim and his family for the very purpose of putting himself in a position where he could take advantage of the victim. He was prepared to go to the lengths of preying upon him when he knew his parents were out of the way, and luring him away at night from his grandfather's birthday party. What he did was a gross and inexcusable breach of trust. Mr Barker submits that the conduct engaged in was consensual, that is so, and for what it is worth I take into account. The fact is of course that the legislation pursuant to which these charges were laid was enacted for the purpose of protecting young persons such as AH , who at the time of the first offence of homosexual intercourse was committed upon him, was aged only thirteen. It does not assist the offender's cause that he told the victim on several occasions not to tell anyone what was going on because no one would believe him if he did, as in effect it would be his word against that of a priest who everyone knows does not lie. A significant difference between this case and some at least of the cases to which I was referred by Mr Barker, is that not only did the offender choose to plead not guilty, but

he continues to protest his innocence in the face of some of the most compelling evidence I have heard in a case such as this. The effect of that is that the mitigating factor of contrition is absent.

It has been submitted by the Crown Prosecutor that at the time these offences were committed they would have been regarded as very serious, even though the penalties then provided for them were less severe than they now are. He further submits that in view of the period over which the offences were committed, there should be some degree of accumulation. I accept those submissions.

In imposing sentence I bear firmly in mind the decided cases to which I was referred by Mr Barker, in particular **Ryan** and **Dunn**, the penalties imposed in those cases, the number and type of charges and the number of victims. It is important to note that prior to today no submission was put to me, either by Mr Barker or by the Crown Prosecutor, suggesting that it would be appropriate for me to find that "special circumstances" exist. I have nevertheless addressed my mind to that question and I today raise the matter with Mr Fitzharding who now appears for the Crown, and with Mr Murray who appears for the offender. The Crown concedes that having regard to the offender's age, his state of health and the absence of previous convictions, it is appropriate that I find special circumstances. I accept that submission and I make that finding. In framing what I consider to be the appropriate sentences, I intend to adopt the approach suggested by the Court of Appeal in **Dunn's** case at para

161.

James Patrick Fletcher for each offence the subject of the fifth and seventh charges on the indictment, charges alleging anal intercourse I sentence you to a fixed term of imprisonment of four and a half years to commence on 6 December 2004, the day you were taken into custody, to expire on 5 June 2009. For each offence the subject of the eighth and ninth charges on the indictment, also charges alleging anal intercourse, I sentence you to a non parole period of imprisonment of four and a half years to commence on 5 December 2007, to expire on 4 June 2012. I sentence you in each case to total terms of imprisonment of seven years to commence on 5 December 2007, to expire on 4 December 2014. For each of the four offences in which the allegation is a form of fellatio, I sentence you to a fixed term of imprisonment of three and a half years. The sentences for the offences the subject of the second and third charges on the indictment will commence on 6 December 2004, and they will expire on 5 June 2008. The sentences for the offences the subject of the fourth and sixth charges on the indictment will commence on 5 June 2008, and they will expire on 4 December 2011. For the offence the subject of the first charge on the indictment, committing an act of indecency, I sentence you to a fixed term of imprisonment of one year to commence on 6 December 2004, to expire on 5 December 2005. On 4 June 2012 you will be eligible for release on parole, on your release you will be supervised by the Probation and Parole Service of New South Wales, you will

be required to obey directions given to you by the officer at the time being in charge of your case. If you fail to obey any direction given you or if in any other way you breach your parole, your parole may be revoked. In imposing the sentences that I have imposed, I have had regard to the totality of the offender's criminal conduct, together with all the mitigating and subjective factors to which I have referred.

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