HIGH COURT OF AUSTRALIA

Public Information Officer

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WGC v THE QUEEN

The date that a man had sexual intercourse with a teenage girl was not essential to proving the offence of having sex with a child aged between 12 and 17, the High Court of Australia held today.

WGC, 58, a general practitioner, was charged with two counts of sexual intercourse with a girl aged between 12 and 17 between 31 January and 28 February 1986 around Renmark in South Australia. At that time, the girl, the daughter of friends of WGC, was 13. She is now 35. At his trial in the SA District Court in July 2006, WGC alleged that the offences, which arose from a single sexual encounter on a houseboat, occurred when the girl was 16 and relied on a defence under section 49(4) of the *Criminal Law Consolidation Act* that he believed on reasonable grounds that she was 17. Her family went on several summer houseboat holidays during the 1980s accompanied by WGC and other family friends. In December 1986 when the girl was 14 she consulted WGC professionally and he took a pap smear. WGC said they had sex in 1989 and believed she was 17 because she had finished school, her friend was 20 and he thought she was two or three years younger, and he was aware the girl had had sex with a friend of his and he believed the other man would not have done so if she were under age. Her date of birth was recorded in his clinical notes.

WGC was convicted on both counts, but has not yet been sentenced. The uncertainty about whether the jury had decided on the basis that the offences took place in either 1986 or 1989 or whether they divided on the year and whether, if any members accepted that the offences occurred in 1989, they accepted the defence under section 49(4) of the Act gave rise to WGC's unsuccessful appeal to the SA Court of Criminal Appeal (CCA). He then appealed to the High Court. WGC alleged that the CCA and the trial judge erred in failing to treat the date of the offences as material which had to be proven beyond reasonable doubt. He also alleged that the verdicts were uncertain or void in that they jury's reasoning may have taken different paths. WGC argued that two sets of offences should have been identified, one where the complainant was alleged to be 16 and one where she was not.

The High Court, by a 3-2 majority, dismissed the appeal. The majority held that date was not material and all that the prosecution was required to prove was that the girl was aged somewhere between 12 and 17, as the sexual intercourse was criminal whether it occurred in 1986 or 1989. Because the date was not essential, WGC was able to seek to confess and avoid the charge by admitting that intercourse occurred but alleging that it occurred in circumstances in which he had a defence under section 49(4) of the Act. The trial was conducted on the basis that the offences could have occurred when the girl was either 13 or 16 and no amendment was ever made to the particulars of the offence. In relation to uncertainty of verdicts, the majority held that the guilty verdicts showed no more than that the jurors agreed that WGC had not established the defence on which he relied. The jury's verdicts did not reveal which elements of that defence were found not to have been proved. The different routes that the jury may have taken would be taken into account in sentencing.

- *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.*

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