13/79

SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v TUTCHELL

McInerney, Menhennitt and McGarvie JJ

22 November 1978 — [1979] VicRp 24; [1979] VR 248; (Noted 3 Crim LJ 234)

CRIMINAL LAW – SENTENCING – TWO OFFENDERS – PARITY – GENERAL RULE.

The general rule when dealing with co-offenders is that disparities in sentences imposed are to be avoided. Whilst it is recognised that it is impossible to achieve mathematical equalisation of credits and debits among offenders who have different backgrounds and histories and are of different ages, the principle applies where two persons are charged with offences arising out of the same set of facts and circumstances.

T. pleaded guilty to one count of indecently assaulting a girl under the age of sixteen years, one count of indecently assaulting a boy under the age of sixteen years, one count of buggery with a woman, one count of buggery with a boy under the age of fourteen years, two counts of buggery with men, two counts of buggery with animals, one count of assault occasioning actual bodily harm and one count of stealing a pocket calculator. His Honour imposed sentences in respect of the ten counts and made orders for concurrency which resulted in an effective sentence of seven years' imprisonment and ordered the applicant to serve a minimum period of five years before becoming eligible for release on parole.

After setting out the applicant's prior history, the facts relating to the offences charged, the plea, the sentences, the grounds of appeal and the disparity with sentences imposed in other cases, the Court said:

It is established that, as a general rule, disparities in sentences imposed on different persons for the same offence are to be avoided: *R v Goldberg* [1959] VicRp 52; (1959) VR 311; [1959] ALR 762. It is recognised that it is impossible to achieve mathematical equalisation of credits and debits among offenders who have different backgrounds and different histories and are of different ages: *R v Kane* [1975] VicRp 64; (1975) VR 658. It is also recognised that where one offender has been sentenced to a wholly inappropriate sentence for the offence the principle of parity between sentences does not require a Court, later sentencing another person upon the same offence, to impose what it considers to be a wholly inappropriate sentence: *R v D'Ortenzio and Burns* [1961] VicRp 68; (1961) VR 432. Although these reported cases deal with persons jointly charged with offences we see no reason why the same principle should not apply in a case where two consenting adults are charged separately in respect of the same act of buggery. In *Holton v R* (1970) WAR 85, the Full Court of Western Australia expressed the principle as one which applies as between persons charged with offences arising out of the same set of facts or transactions. ... *[The Court considered other matters and imposed a substituted sentence.]*
