

R. v. Racine

Between
Her Majesty The Queen, and
Richard Racine

[1994] O.J. No. 47
DRS 94-04735

Ontario ~~Court of Justice~~ - General Division
Belleville, Ontario/
Byers J.
January 10, 1994.
(9 pp.)

Criminal law -- Sexual assault -- Gross indecency
-- Attempted buggery -- Sentence -- Sexual assault on child
-- Breach of position of trust -- Teacher.

Sentencing of an accused convicted of sexual assault, gross indecency and attempted buggery. He had no prior record. The complainant was an 11-year-old boy when the offences occurred. The accused was a teacher at his school. The offences took place over a 4-1/2 year period. The accused then left teaching, became a priest and underwent surgical castration. He had a history of excessive alcohol use.

HELD: The accused was sentenced to 15 months imprisonment on each count followed by three years of probation on terms. Treatment was recommended.

Edward H. Bradley, for the Crown.
David Crowe, for the Accused. •

[para1] BYERS J. (orally):-- Thank you for your assistance, counsel.

[para2] I confess that this case has given me some difficulty; and there are obviously some novel aspects to it.

[para3] The accused is Richard Racine. I am to sentence him for three offences: sexual assault, gross indecency and attempted buggery, to which he has pled guilty. He has no criminal record. The offences took place between January 1983 and August 1987. There is one complainant, D.B. D. was about 11.5 years old when the relationship with the accused began. He was in Grade 6. Mr. Racine was then a teacher at D.'s school. He was 36 years old. D. would come over to Mr. Racine's house to do odd jobs.

[para4] This friendly relationship became a sexual one, or at least it took on a sexual component. It began with fondling and over the next four and one-half years progressed through masturbation, oral sex and several attempts at anal penetration. There was no violence; no threats of violence. D. was a child, too young to consent to anything.

[para5] At the same time Mr. Racine left teaching and entered a seminary with a view to becoming a Catholic priest. At or about the time of his ordination as a priest Mr. Racine ended the sexual component of his relationship with D. and began, on his own, to take steps to change his behaviour. These steps culminated in surgical castration, which took place in April 1990.

[para6] Mr. Racine has been diagnosed as a homosexual paedophile. He has a history of excessive alcohol use. These charges apparently surfaced several years after the castration.

[para7] Mr. Racine is a particularly gifted individual. All seem to agree that he is intelligent, friendly, caring, reliable, competent; a natural born leader. I have letters of reference from many people filed in support. They describe all the good things that he has accomplished.

[para8] I have Mr. Racine's own letter which I propose to read.

"On the evening of July 13, 1993, I was arrested and charged with sexual misconduct that occurred before 1987. When I heard the charges read I was completely devastated, partly because I knew what it meant to me and the life I had fabricated, and also because I knew the

appalling effect this would have on my family and friends, my students and parishioners.

As part of the procedure, I was driven to the police station to be photographed and finger-printed. It was in the car that a verse of scripture came to mind that was to sustain me in my time of crisis and would continue to help me to see the hand of God in this for myself and others, for the present and the future. The words were: 'If you live according to my teaching, you are truly my disciples; then you will know the truth, AND THE TRUTH WILL SET YOU FREE'. (John 8:32)

The purpose of my writing this is to try to set forth the truth as accurately as possible. I am guilty of sexual abuse as charged. Until 1988 I lived a lie; a lie that I had lived most of my life. It is not my intention to make excuses for my behaviour, though I will readily admit that through therapy I am discovering that many things, including being abused myself, led me to act out in this fashion. I am filled with remorse for what I have done and I ask forgiveness of everyone I have hurt. I deeply regret what I have done and the pain I have caused. There is, however, a further aspect to my story that I need to share with you. Until 1988 I did not believe that there was anything I could do to change my behaviour pattern. Until then I felt that I had a curse and only death would remove it. In 1988 I read a newspaper account of the therapeutic work that Dr. John Bradford of the Royal Ottawa Hospital was doing with sexual offenders. I immediately made an appointment and after testing, began chemical therapy to reduce my sex drive. This worked very effectively and for the first time in my life I began to feel free of the force that compelled me to act out. After a number of months and after consultation with Dr. Bradford and a surgeon I made an irreversible decision: unwilling to spend the rest of my life taking drugs but wanting this effect, I decided to be castrated. This procedure took place in the spring of 1989. I then continued the life that most of you know about: a life that included chaplaincy, vocation work, pastoral care and making amends for the wrong I had done. During these four years I believe that for the first time in my life I was able to direct all my energies where I wanted them

and I thank God for what I feel I was able to accomplish. Thanks to my experience here at Southdown, a treatment centre, I am beginning to realize that 'the truth will set me free' but that sometimes the truth hurts and the truth means facing realities that are not always of my choosing. Instead of dealing only with the problems, I also need to look at their roots. If I am going to come out of this a healthy person, it will be because of the grace of God, the people of Southdown and the people of the Archdiocese of Kingston who continue to support me. As I write this I do not know my future. If necessary I will go to prison and live out my own desert experience. Then I will return to Southdown to complete my treatment and discernment process. My prayer is that by that time I will be considered well enough to continue my ministry in some fashion.

[para9] I have two victim impact statements. They describe the devastating effect of the bad things Mr. Racine did to D. They talk about feelings of betrayal and breach of trust. Mr. Racine was a school teacher and a church leader. He took advantage of a young boy for his own gratification.

[para10] While he was not in loco parentis towards D., I agree with Mr. Bradley, because of his position in the community, there is a breach of trust.

[para11] I am now required to sentence him for that, and by my sentence publicly denounce that sort of behaviour. But as counsel well know, public denunciation is not the only factor I must consider. I am not free to simply sentence the accused to whatever I like. No sentence can compensate this victim; no sentence will take away his pain or his anguish. In fact I am required, by law, to balance the aggravating factors of this crime and the impact it had on this victim, against the mitigating factors of this accused.

[para12] There is a need for deterrence, both general and specific. There is a need to reiterate that these sorts of crimes will simply not be tolerated, and they will be punished. There is a need to encourage pleas of guilty; to spare the victim; to recognize genuine remorse and to foster the rehabilitation process.

[para13] These kinds of offences against children take place in secret. Many go on for years with multiple victims. When disclosed they are often hard to prove in a criminal court room. Overly harsh sentences, while they may satisfy some for the moment, may also drive other offenders underground; to deny guilt; to refuse treatment.

[para14] What then is the appropriate sentence?

[para15] In a case called R. v. Joseph B, the Court of Appeal set out some general parameters. I quote from that decision.

The decisions of provincial appellate courts establish that, except in unusual circumstances, a penitentiary sentence is called for in all cases of sexual abuse of children to whom the convicted person stands in loco parentis if the abuse involves sexual intercourse.

[para16] It then spoke of an appropriate range - 3 to 5 years.

[para17] That case was a case of mine, and in my view I am bound by the principles enunciated in it. But I remind counsel of the factual differences. In that case the victim was 6 years old. There was an extensive period of sexual intercourse. The accused was her stepfather who was in a position of loco parentis. There was extreme violence. The accused pleaded not guilty at trial. He put the victim through a difficult trial and cross-examination, and then he never testified. There was no evidence on his part of remorse. I remember that case well. That man, in my view, was a monster. If he had been acquitted, I am convinced he would have continued to offend and there would have been more victims.

[para18] This is not the case here. Here we have a plea of guilty, there is genuine remorse, there is no violence, there is no position of loco parentis. This accused has done all he can do to rehabilitate himself including surgical castration. And he has done that on his own, before these charges surfaced.

[para19] I am satisfied that the risk that this accused

will re-offend is small. Both Dr Bradford and Dr Marshall agree that castration has a dramatic effect on future risk.

[para20] I must be careful that my sentence does not crush him and send the wrong signal to other offenders who wish to admit guilt and do something constructive to rehabilitate themselves. And yet I will not, and simply cannot ignore his crime. There is yet a debt to be paid. There is a debt to this victim and a debt to this community at large.

[para21] The law requires that but for exceptional circumstances in cases such as these, a custodial sentence must be imposed. At one time I might have considered this to be such a case. I do not now. It may well be that voluntary castration in cases of paedophiles should, as a matter of policy, be encouraged by the courts by allowing for the possibility of a probationary sentence. As I understand it, that is not now the law.

[para22] Stand up please sir. The sentence on each count is as follows: 15 months in custody. I recommend commencement of immediate treatment programme, if possible on an outpatient basis at Southdown or such other treatment facility, to deal with the accused's paedophilia and acknowledged problem with alcohol; to be followed by 3 years' probation on the following terms: (1) to report forthwith and thereafter as required; (2) continue with the treatment programme as outlined above; (3) not to be alone with any male child 15 years of age or under, unless accompanied by another adult.

[para23] Good luck to you sir.

[para24] Thank you.

DRS

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