

IN THE PROVINCIAL COURT OF NOVA SCOTIA

R. v. Randall , 2006 NSPC 38

Date: 2006/08/25

Docket:1538178

Registry: Halifax

Her Majesty the Queen

v.

Kevin Scott Randall

Judge: The Honourable Judge Castor H. Williams

Sentencing: August 25, 2006, Halifax, Nova Scotia

Charge: **Section 172.1 (1) (c) Criminal Code**

Counsel: Craig Botterill, for the Crown
Stan MacDonald, for the Defence

By the Court:

Introduction:

[1] On April 28, 2006, following a trial, I found the accused, Kevin Scott Randall, guilty of the offence of luring a child through the means of a computer system, contrary to the **Criminal Code**, s. 172.1(1)(c). My decision is reported as **R.v. Randall**, [2006] N.S.J. No. 180, 2006 NSPC 19.

[2] A sentencing hearing was scheduled for June 29, 2006 and counsels intimated that they had agreed on a joint recommendation for a fit and proper sentence. Even so, the Crown, signified its intention that pursuant to the **Criminal Code**, s. 490.012 (1) it would apply for an order requiring the accused to comply with the provisions of the **Sexual Offender Information Registration Act**, S.C. 2004, c.10.

[3] In response, the accused submitted that he ought to be exempt from such an order pursuant to the **Criminal Code**, s. 490.012 (4). As a result, sentencing was adjourned until August 22, 2006 in order to give the accused time to acquire and to submit a *Psychosexual Risk Assessment Report*, in support.

[4] I received the *Psychosexual Risk Assessment Report* authored by Steven Cann and dated August 11, 2006. Also, I have received a Presentence Report dated June 12, 2006 and case authorities submitted by the accused. Upon hearing the submissions of counsels on August 22, 2006, I reserved my decision until today.

Disposition

[5] First, I should commend counsels for their thoughtful and thorough joint recommendation, which I adopt. I think that it is proportionate to the moral blameworthiness of the accused who had engaged in an opportunistic activity which, according to the reports before me and oral submissions, seem to be “out of character.” Although, he appears to be in denial that facet, according to the *Psychosexual Risk Assessment Report*, may not be a direct risk factor but could affect his motivation to change. However, I think that his willingness to attend and participate in a Provincial Community Sexual offender program as part of his sentencing regimen, as jointly recommended, along with other measures, as contained, would assist in his rehabilitation and alleviate any concerns about possible recidivism.

[6] Second, I think that the joint recommendation also addresses the important principle of denunciation as it sends the message to offenders that those who prey on our society’s most vulnerable members by the medium of the computer will suffer incarceration. His house arrest, under strict conditions, separates him from society and the prohibition pursuant to the ***Criminal Code***, s.161, is an acknowledgment of and reparation for the harm that he has done to society.

[7] With respect to the ***Sexual Offender Information Registration Act*** (hereafter referred to as “**SOIRA**”), the authorities are clear that on an

analysis under the **Criminal Code**, s.490.012(4) I must consider the impact of the order on the accused, the public interest in protecting society through the effective investigation of crimes of a sexual nature and whether the impact on the accused would be grossly disproportionate to the public interest. See: **R.v. D.B.M.**, [2006] N.S.J. No.45, 2006 NSCA 18, **R.v. R.E.M.**, [2005] B.C.J. No. 1191, 2005 BCSC 698, **R.v. Have**, [2005] O.J. No. 388, 2005 ONCJ 27, **R.v. A.G.N.**, [2005] B.C.J. No. 2781, 2005 BCPC 582.

[8] In his submission in support of the exemption, counsel for the accused referred extensively to the *Psychosexual Risk Assessment Report* as it relates to the accused psychosexual characteristics. He pointed out that the accused has no prior sexual related convictions and has not re-offended since the incident. Additionally, he has been on strict conditions of release that he has not violated. Further, what occurred and for which he has been convicted may be considered to be, in all the circumstances, an issue relating to his problem solving techniques and an exercise of poor judgment rather than an act of overt sexual violence or non-sexual violence.

[9] The risk instruments used in the comprehensive risk assessment were The Static -99, STABLE and PCL-R(2nd Edition). I note that on eight of the ten Static-99 factors his scores were zero with the exception of the victim being unrelated to him and was a stranger, for which he scored one on those two factors. Overall, his “static risk estimate is low-moderate, which is the second lowest risk level. This corresponds to a 9% recidivism rate over 5 years and a 16% recidivism rate over 15 years.”

[10] According to the STABLE factors that assess “the changeable factors related to risk of re-offending” and, as alluded to by his counsel, the accused, because of the conviction, has been sociably isolated. He is less certain of his once positive and intimate relationship with his girlfriend. His profile bears out that he “does not show an emotional identification with children . . . ,” he is “comfortable with women as friends and shows no sexist or hostile attitudes towards adult females, either in the interview or psychometric testing.” Moreover, he has a “broad network of friends and associates” and significantly, he does not report “ a high sex drive or sexual pre-occupation . . . use of pornography . . . behavioural history of sexually deviant interest . . . cognitive distortions with regards to sexual contact with children that often are associated with deviant sexual interest,” or “ . . . that he endorsed or accepted attitudes that would support child sexual contact.”

[11] Additionally, as declared in the *Psychosexual Risk Assessment Report* at p.10:

Mr. Randall’s responses in the interview and testing showed a good understanding of harm that would be caused by sexual contact with children, that sexual contact with children could not be justified (i.e., the items in the psychometric battery provide the opportunity to endorse a broad range of justifications for sexual contact with children) and a good understanding of the issue of consent (i.e., a child cannot consent to sexual contact with an adult).

[12] Counsel for the accused also pointed out that the accused estimate of risk identified by the STABLE factors was low. Referring to the PCL-R methodology that “shows psychopathic traits and the related risk of future

recidivism (including sexual recidivism)” Counsel directed my attention to the finding that the accused “risk of general, violent and sexual recidivism is very low.” Thus, when all the assessment tools are weighed together the conclusion is that, “overall, the estimate of risk for sexual recidivism is low.” As a result, his “responsivity to treatment is good and the prognosis for success is positive, if he chooses to engage in treatment.”

[13] From that perspective, Counsel submitted that the treatment regimen that is jointly recommended would satisfy not only the objectives of rehabilitation and proportionality but would also be in society’s best interest as the accused is considered to be “in the pre-contemplation stage of change.” Furthermore, as the “overall estimate of risk of sexual recidivism is low and the prognosis, if he enters treatment, is that he would be successful” this would make the impact of a SOIRA order on him, in the circumstances, grossly disproportionate to the public interest in protecting society through the effective investigation of crimes of a sexual nature.

[14] When I consider the purpose of SOIRA and the effect of registration to permit the police to track and monitor sexual offenders wherever they might be and that the information provided under SOIRA may be useful in the investigation of sexual related crimes by identifying individuals who, because of past convictions for sexual crimes might be suspects, I think that as was put by B. W. Duncan J., in **R.v. Have**, [2005] O.J. No. 388, 2005 ONCJ 27, at paras. 15 and 16:

15. The model is the predatory stranger offender who “hunts” from areas close to his home or work. Registration is particularly valuable to enable quick response in cases of child abduction by a stranger, where time is of the essence to prevent murder.

16. In summary, the assumption underlying the scheme is that a person who has committed this type of offence in the past may have a propensity to commit a similar offence in the future. Registration of such persons is valuable in cases of offences committed locally by strangers to the victim. The value of a registry to investigation of other types of sex related offences is less apparent.

[15] Counsel has submitted that the requirements of SOIRA would have severe impact upon the privacy and liberty of the accused. Although he is well educated, he is unemployed due in part to his conviction. He lives in a small community and may require to locate to seek employment. He would carry a stigma that would cause him and members of his family grief. His right to privacy would be affected every time there is a sex crime in his neighbourhood and the police choose to interrogate him as this could reveal the fact to his employer and neighbours that he is on the registry.

[16] I find, on the evidence before me, that his conduct was not predatory but one of poor judgment. Further, he is not considered a “hunter” and he has no prior offence of a sexual nature and does not have the propensity to commit one in the future. Thus, I find that on the reports before me, and on the submissions of counsels that, in these set of circumstances, given that the accused is not considered a danger to the public and that he is at a low risk for sexual recidivism, the value of registration is negligible.

[17] Furthermore, in my view, considering his low risk factors and not posing a genuine danger to the public; a positive prognosis for successful treatment; his lack of any sexual related crime conviction; the nature of the offence and the circumstances surrounding its commission; the submission of counsel as to the potential impact of an order on his privacy and security of the person, I conclude and find that the impact of registration on his privacy and liberty would be substantial.

[18] Therefore, I think that, on balance, in the present case, subjecting the accused to the requirements of a SOIRA order is grossly disproportionate to the public interest in protecting society through the effective investigation of crimes of a sexual nature and, in my view, on the information before me, is not reasonably justified. Put another way. I am satisfied that the accused has established that he can avail himself to the exemption of the SOIRA order pursuant to the **Criminal Code**, s.490.012(4).

[19] Accordingly, I decline to make the Order.

[20] As I have indicated I accept and adopt the joint recommendation for sentence. Consequently, I impose the following sentence. The accused will stand.

[21] I sentence you to a term of imprisonment for one year that pursuant to the **Criminal Code**, s.742.1 you can serve in the community on the following conditions:

1. Keep the peace and be of good behaviour;

2. Appear before the Court when required to do so by the court;
3. Report to a supervisor at Truro, on or before August 30, 2006, and as directed;
4. Remain in the Province of Nova Scotia, unless written permission is obtained;
5. Notify promptly the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation;

And in addition, you shall,

6. Participate in and cooperate with any assessment, counselling or program directed by your supervisor;
7. You are prohibited from using a computer within the meaning of subsection 342.1(2) **Criminal Code** for the purpose of communication with persons under the age of fourteen years old;
8. You are to attend for assessment, counselling and treatment at a provincial community based sexual offender programme;
9. You are not to attend a public park area where persons under the age of fourteen years are present or can reasonably be expected

to be present, a daycare centre, school ground, play ground or community centre;

10. You are prohibited from seeking, obtaining or continuing any employment whether or not the employment is remunerated or becoming or being a volunteer in a capacity that involves being in a position of trust or authority towards persons under the age of fourteen years;
11. For the first six months of this order you are to remain in your residence 24 hours a day, 7 days a week;
12. For the remain period, abide by a curfew between the hours of 11:00 p.m. until 6:00 a.m. the following day;
13. The exceptions to the house arrest and the curfew are only permitted if:
 - (a) you have the written permission of the supervisor or when at regularly scheduled employment, which your supervisor knows about and travelling to and from that employment by a direct route;
 - (b) when attending a regularly scheduled education program, which your supervisor knows about or at a school or educational activity supervised by a principal or teacher and

travelling to and from the education program or activity by a direct route;

- (c) when dealing with a medical emergency or medical appointment involving you or a member of your household and travelling to and from it by a direct route;
- (d) when attending a scheduled appointment with your lawyer, your supervisor or a probation officer, and travelling to and from the appointment by a direct route;
- (e) when attending a counselling appointment, a treatment program at the direction of or with the permission of your supervisor, and travelling to and from the appointment, program or meeting, by a direct route;
- (f) when attending a regularly scheduled religious service with the permission of your supervisor;
- (g) when making application for employment or attending job interviews, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.;
- (h) For not more than 4 hours per week, approved in advance by your sentence supervisor, for the purpose of attending to personal needs;

[22] Additionally, pursuant to the **Criminal Code**, s.161 (1) (a), (b), (c) you are prohibited from:

- (a) attending a public park or public swimming area where persons under the age of fourteen are present or can reasonably be expected to be present, a daycare centre, schoolground, playground or community centre.
- (b) seeking, obtaining or continuing any employment, whether or not employment is remunerated or becoming or being a volunteer in a capacity that involves being in a position of trust or authority towards persons under the age of fourteen years.
- (c) using a computer system within the meaning of s. 342.1(2) for the purpose of communicating with a person under the age of fourteen years.

The Prohibition under this order would be for the period of ten years.

There shall be no victim fine surcharge.

[23] That is the sentence of this court. Sentenced accordingly.

J.