

CITATION: R. v. Rayat, 2020 ONSC 6246
COURT FILE NO.: CR-17-0703-0000
DATE: 2020 10 15

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN

- and -

SATNAM RAYAT

A. Mountjoy, for the Crown

D. Paradkar, for the Defence

HEARD: October 6, 2020, at
Brampton

REASONS FOR SENTENCE

André J.

[1] I convicted Mr. Rayat of the offences of sexual assault, touching for a sexual purpose and invitation to sexual touching for a sexual purpose following a bench trial. The Crown now seeks a sentence in the range of eighteen months to two years less a day imprisonment while Mr. Rayat's counsel suggests that a six-month term of imprisonment is appropriate in this case.

SUMMARY OF THE FACTS

[2] The Peel Regional Police Force charged Mr. Rayat with the offences after receiving a complaint from the twelve-year-old complainant that between September 1, 2015 and September 16, 2016, Mr. Rayat, who was her martial arts instructor, touched her inappropriately and on one occasion, had her hold his penis. She also alleged that Mr. Rayat had exposed his penis to her on five or six occasions, placed his hand down her shirt and tickled her breast while he was alone with her in the gym where he gave her martial arts lessons.

[3] Following a trial, I convicted Mr. Rayat of the charges on the indictment. The Crown has requested that for the purpose of sentencing, the sexual assault charge against Mr. Rayat should be stayed.

ANALYSIS

[4] Determining an appropriate sentence in this case involves a consideration of s. 718.1 of the *Criminal Code*, which provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Assessing these two factors requires an assessment of both the aggravating and mitigating factors and the applicable sentencing principles that apply.

Aggravating Factors

[5] The Crown has identified the following aggravating factors:

- (1) Mr. Rayat sexually abused a person under the age of eighteen years, which, pursuant to s.718.2 (ii.1) of the Code, is statutorily aggravating;
- (2) Mr. Rayat, in committing the offences, abused a position of trust which, under s. 718.2(iii) of the Code, is statutorily aggravating;
- (3) The incidents occurred over a significant period of time;
- (4) The sexual assault was not an isolated incident;
- (5) Mr. Rayat repeatedly violated the complainant's bodily integrity;
- (6) The victim was merely eight years old when the sexual abuse started and ended when she was nine years old.

Mitigating Factors

[6] These include the following:

- (1) Mr. Rayat is sixty-one years old and has no criminal record;
- (2) Mr. Rayat has a steady employment history;
- (3) Mr Rayat enjoys significant support in the community evidenced by the numerous reference letters of support filed on his behalf;
- (4) Mr. Rayat has been diagnosed with a Major Depressive Disorder and according to an assessment by his psychologist, "has no history of offending, no deviant sexual interests, no prior involvement with

the criminal justice system, and in particular, no history of prior sex offending”;

(5) Mr. Rayat has sought counselling; and

(6) Mr. Rayat has been on bail for years without breaching any conditions of his bail.

SENTENCING CASES

[7] The Crown relies on a number of cases in support of its position.

[8] For example, in *R. v. D.D.* [2002] O.J. No. 1061 (ONCA), at para. 34,

Justice Moldaver noted that:

The overall message however, is meant to be clear. Adult sexual predators who would put the lives of innocent children at risk to satisfy their own deviant sexual needs must know that they would pay a heavy price. In cases such as this, absent exceptional circumstances, the objectives of sentencing proclaimed by Parliament in s. 718(a), (b) and (c) of the *Criminal Code*, commonly referred to as denunciation, general and specific deterrence, or the need to separate offenders from society, must take precedence over the other recognized objectives of sentencing.

[9] Moldaver J. further noted in *D.D.* at paragraph 44 that:

... I am of the view that as a general rule, when adult offenders, in a position of trust, sexually abuse an innocent child on a regular and persistent basis over substantial periods of time, they can expect to receive mid to upper single digit penitentiary terms.

[10] Similarly, in *R. v. Bauer*, 2013 ONCA 691, the Ontario Court of Appeal noted at paragraph 19 that:

It is of paramount importance that children be protected from seducers and predators through sentences that emphasize the principles of denunciation and deterrence.

[11] In *R. v. Barua*, [2014] O.J. No. 248, a Court sentenced an accused who had pulled down the pants of the eight-year-old child being babysat by his wife, kissed him, licked his penis and humped him, to ten months imprisonment. On appeal, the Ontario Court of Appeal noted that,

The trial judge correctly concluded that a sexual assault on a young victim in the circumstances of this case would normally attract a medium to high range reformatory sentence even for a first offender.

[12] In *R. v. Bachewich*, [2007] A.J. No. 629, the appellant was convicted of having sexually assaulted the nine-year-old friend of his daughter, and sentenced him to a twelve month term of imprisonment. He was found to have placed his hands under the complainant's pyjamas without digitally penetrating her. On appeal of his sentence, the Alberta Court of Appeal noted at paras. 13 and 14 that,

There is a considerable range of sentence for a sexual assault of a child short of penetration. The ultimate sentence depends not only on whether it is a single incident but also upon other aggravating and mitigating factors. Here the child fled her own home and sought protection with the appellant. She was particularly vulnerable...The standard of review requires that the sentence be outside the range. In this case we do not view the sentence of 12 months imprisonment as being too high on the facts of the case.

[13] In *R. v. R.P.* [2006] O.J. No. 4250, the Ontario Court of Appeal reversed a seventeen-month sentence imposed on an appellant who had been convicted

of briefly fondling the victim's vagina on two occasions to one of twelve months imprisonment.

[14] In *R. v. Hussein* 2017 ONSC 4202, the Court noted the following at paragraph 35,

The appropriate range of sentence in cases involving external sexual touching of children were reviewed extensively by Linhares de Sousa in *R. v. M.L.* supra (2016 ONSC 7082), and I will not repeat her summaries of these cases. In the most mitigated cases, sentences of 90 days imprisonment were imposed. In the more aggravated cases, especially those involving breaches of trust and some repetition, sentences between six months and fifteen months were imposed... the case at bar, of course, involved some external sexual touching but it also involved a single act of intercourse. In cases involving acts of oral sex with children, somewhat longer sentences of 17 months or 18 months have been imposed, as these assaults are more invasive... In *R. Manjra* 2009 ONCA 485, the Court held that 17 months was "within the range for this offence, even for a first offender," where the accused committed an act of cunnilingus with a year old girl. He was at the low end of a trust relationship with the victim who was the child of a neighbour.

[15] The Crown also relies on the recent Supreme Court of Canada decision: *R. v. Freison*, that in cases of child sex abuse, there is harm done to the complainant even though there is no direct evidence of such harm: at paras. 82-83. Furthermore, that in determining an appropriate sentence in cases of sexual assault, courts should move away from drawing a distinction between cases involving penetration and those which do not: at para. 144.

[16] Mr. Paradkar submits that the case of *R. v. Levert* (2001) CanLII 8606 (ONCA), where a sexual offender was sentenced to six months imprisonment, is very similar to this case. In that case, the accused twice touched the nine to ten year old complainant who was dyslexic and who suffered from Attention Deficit

Disorder. During the first incident, the complainant and a friend slept at the accused's home. The accused approached the complainant while he was sleeping, placed his hand on the complainant's penis and played with it. On another occasion, the accused placed his hand on top of the complainant's penis over his clothing. A jury convicted the accused and the trial judge sentenced him to a six-month term of imprisonment followed by two years probation. The Ontario Court of Appeal dismissed the appeal from both conviction and sentence. The court noted at para. 42 that, "The fact that the abuse was not as intrusive as has been seen in many other cases was reflected in the relatively short period of imprisonment".

[17] In my view, the facts in the case at bar are more serious than that in *Lever*. Mr. Rayat was convicted of exposing himself to the complainant several times, of touching her breast and of inviting the complainant to touch his penis. While the victim in *Lever* may have been more vulnerable on account of his medical issues, the complainant in the instant case was no less vulnerable given Mr. Rayat's violation of her parents' trust.

[18] Further, as noted in a number of the above decisions, being a first offender does not significantly reduce a sentence where the offences involve the abuse of a child. Indeed, the fact that an accused may be a respected, law abiding member of the community, is oftentimes the calling card of persons engaged in the abuse of children. Additionally, the age of the complainant and

the position of trust held by Mr. Rayat appear to justify a period of imprisonment in the mid to upper reformatory range.

[19] However, I am required to give consideration to the mitigating factors in this case and Mr. Rayat's rehabilitation. Mr. Rayat has no criminal record, has been gainfully employed for many years and enjoys the support of a large number of persons in the community. He suffers from a major depressive disorder and is receiving treatment for the disorder. Psychologist Vincent Murphy has conducted a number of tests on Mr. Rayat and has concluded, in his September 30, 2020 report, that "both self-report and actuarial measures indicate an extremely low risk for recidivism". He further noted that, "On the basis of the present assessment, it can be said that Mr. Rayat's risk for reoffending is extremely low".

[20] In my view, the appropriate sentence in this case is a term of imprisonment of twelve months followed by a one year term of probation with the following conditions:

- (1) Report to a probation officer upon your release and thereafter as required.
- (2) Have no weapons as defined in the *Criminal Code*.

- (3) Take such counselling as may be recommended by a probation officer, and present proof of completion to the probation officer as required.
- (4) Mr. Rayat should have no association or contact, directly or indirectly, with M.B.
- (5) Seek and maintain gainful employment.

Ancillary orders:

- (1) DNA Order (primary designated offence (sexual interference)).
- (2) S. 109 order for life.
- (3) S. 161 (1)(a) order for 20 years.
- (4) S. 743.21 order.
- (5) Mr. Rayat must comply with an order pursuant to the *Sex Offender Information Registration Act (SOIRA)* for ten years.

André J.

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Released: October 15, 2020