

IN THE COUNTY COURT OF VICTORIA

Revised Not Restricted Suitable for Publication

AT MELBOURNE
CRIMINAL DIVISION

Case No. CR-14-01458
CR-15-00380
CR-15-00381

DIRECTOR OF PUBLIC PROSECUTIONS

v

DAVID EDWIN RAPSON

JUDGE: HIS HONOUR JUDGE PARRISH
WHERE HELD: Melbourne
DATE OF PLEA HEARING: 1 April 2015; 4 May 2015
DATE OF SENTENCE: 11 May 2015
CASE MAY BE CITED AS: DPP v Rapson
MEDIUM NEUTRAL CITATION: [2015] VCC 610

REASONS FOR SENTENCE

Subject: CRIMINAL LAW
Catchwords: Five charges of rape and six charges of indecent assault
Legislation Cited: *Crimes Act 1958* s.63(3A) (as it then was), s.6D, s.6E and s.6F, s.44(1) s.45(1); *Sentencing Act 1991*; *Sex Offenders Registration Act 2004*
Cases Cited: *R v Chen* [1993] 2 VR 139; *R v Verdins*; *R v Buckley*; *R v Vo* [2007] VSCA; *SD v The Queen* [2013] VSCA 133; *Ryan v The Queen* (2001) 206 CLR 267.
Sentence: Total effective sentence of 12 years six months imprisonment with non-parole period of nine years four months imprisonment. 445 days declared as pre-sentence detention already served under this sentence. Sentenced as a Serious Sexual Offender; Sex Offender Registration reporting for life.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Mr D Cordy	Office of Public Prosecutions
For the Accused	Mr S Ginsbourg	Mr P Randles

HIS HONOUR:

- 1 David Edwin Rapson, over the course of three trials you have been found guilty of five charges of rape, two charges of indecent assault and four charges of indecent assault on a male.
- 2 The first offending occurred in 1975 or 1976 when you were training to be a priest. All the other offences occurred when you were a brother or a priest at a particular Catholic boys' secondary school which catered for both boarding and day students. The offending at the school occurred over the years from approximately 1975 to 1978 and from 1987 to 1990, during which time you were a teacher at such school, rising to the position of vice-principal.
- 3 The offence of rape is contrary to the then s.44(1) of the *Crimes Act* 1958, and at the date of offending carried a maximum penalty of ten years' imprisonment. The offence of indecent assault is contrary to the then s.44(1) of the *Crimes Act* 1958, and at the time of the offending carried a maximum penalty of five years' imprisonment. The offence of indecent assault of a male is contrary to the then s.63(3A) of the *Crimes Act* 1958 and carried a maximum penalty of five years' imprisonment. The penalties in respect of rape and indecent assault have increased since the date of the offending, but the law provides that the maximum penalty applicable is that at the time of your offending.
- 4 The three trials in which you have been found guilty of such offences constituted a retrial of these offences. In October 2013 you were found guilty of these charges (together with two further charges) and were sentenced to a period of imprisonment. On your appeal, the convictions were quashed. I shall refer to the initial trial as the "earlier trial".

Circumstances of the subject offending

5 In relation to the first current trial, which commenced on 24 February 2015, involving Indictment No.C10688841.RT1, you were found guilty by a jury on 4 March 2015 of the following six charges:

- Charge 1 – the rape of Complainant A between 1 January 1988 and 17 May 1988 by introducing your penis into the anus of Complainant A. The complainant was a 12-year-old boarder who went to your room to play games on your computer at about 10 pm one night at your invitation. After about 20 minutes you offered the complainant a lemonade drink, which he drank straight away, as he was thirsty. He then felt dizzy and fell asleep or became unconscious, waking in a foetal position on the floor by your desk, feeling pain in his anus, and discovering you on top of him, pushing your penis in and out of his bottom. He could not move from under you, and felt you ejaculate after about ten seconds. You then climbed off, and Complainant A ran straight from your office back to his dormitory where he lay crying. He was thereafter unable to defecate, and the following weekend went home, was taken by his mother to the doctor for constipation, and given suppositories.
- Charge 2 – the rape of Complainant B between 1 March 1990 and 13 April 1990 by introducing your penis into the anus of Complainant B. Complainant B had come to the school as a sixteen-year-old boarder in Year 10, turning 17 in July of that year. He had had learning difficulties and dyslexia, and was sent to the school to undertake an agricultural course, with his parents hoping eventually to set him up on a farm. One evening you told Complainant B to come to your office, where you offered him a cigarette immediately he came in, and then a drink, which Complainant B thought was whisky.

You then talked to Complainant B about his learning difficulties and schoolwork, and suddenly told him to come and stand in front of a high-

backed chair. You then pushed Complainant B's head down in the chair-back, took off his pants, and inserted your penis in his anus. He began crying from the pain, and you told him to shut up, and hit him on the back of the head, saying no one could hear him. After some time you withdrew your penis and walked him back to the dormitory. Complainant B went to the toilet and found blood in his jockey shorts.

- Charge 3 – the further rape of Complainant B between 30 April 1990 and 31 May 1990. One night, soon after the Easter holidays, you came to Complainant B's dormitory and ordered him back to your office. He began to cry, as he knew what would happen. Immediately you were in the office you told him to go to the chair, where you pulled down his pants and put your penis in his anus.
- Charge 4 – the further rape of Complainant B about a week after the rape described in Charge 3. The rape happened in exactly the same way as that described in Charge 3. Again Complainant B was crying, and thereafter he hid from you whenever he saw you coming, including hiding in a cupboard.
- Charge 5 – the further rape of Complainant B between 1 July 1990 and 31 August 1990, when you introduced your penis into the anus of Complainant B. On that occasion you came into the dormitory late one night and ordered Complainant B to your office, where you pushed him over the desk and then, as he lay there, tied his hands with a cord. You then pulled down Complainant B's pants and inserted your penis into his anus, and were, according to Complainant B, extremely rough and hard.
- Charge 6 – the indecent assault of Complainant B. When committing the rape described in Charge 5, you leaned over and grabbed the testicles of Complainant B with your hands, squeezing and yanking them, causing Complainant B to cry out in agony. You then placed a handkerchief in

Complainant B's mouth, ejaculated, withdrew your penis, and came to the side of the desk with your pants still down, slapping your penis against the complainant's still-tied hands. You then pulled the handkerchief from the complainant's mouth and tried to insert your penis, but Complainant B kept his teeth clenched, and you could only get your penis between his lips. You then stopped and untied the hands of Complainant B, but had to physically help him back to a walkway area, where you left him. He was unable to walk next day due to pain in his testicles, and was told to stay in bed in the dormitory. He ran out in the afternoon when you came in, crossing fields and swimming a river to the next property, where he was found that night and brought back, and a doctor called. Ultimately his parents took him to their own specialist, and on 31 August 1990 he underwent surgery for torsion of the right testicle.

6 In relation to the second current trial, which commenced on 5 March 2015, involving Indictment No.C10688841.X, you were found guilty by a jury on 20 March 2015 of the following two charges:

- Charge 1, the indecent assault of a male, involving Complainant C, which occurred at some time between 1 January 1975 and 30 December 1976. Complainant C first met you when he was 11 or 12, and you were 17 or 18, in your final years of school, with you being a friend of his older sister. In or about 1975 or 1976 Complainant A attended a day school retreat at a Catholic college where you were training to be a priest. You invited the complainant, who was then about 13 or 14, into your bedroom, talked to him about sexual feelings, pulled out his penis and masturbated it, and, at the same time, pulled out your own penis and masturbated that also.
- Charge 2, the indecent assault involving Complainant D between 1 January 1987 and 31 December 1987. Complainant D was a 14-year-old boy at the school who reported to your office one afternoon to hand in homework during a week's suspension from school. You invited him to

play a game on your computer, then leaned over him to open a drawer containing lollies and cigarettes and money, and asked him if he liked anything there. The complainant then stood up, and you grabbed him on the testicles through his clothes, after which the complainant told you to “fuck off”, punched you, and ran from the room.

The jury was discharged without reaching a verdict in relation to a further charge, Charge 3. In a later trial you were found not guilty of that charge.

7 In relation to the third current trial, which commenced on 23 March 2015, involving Indictment No.C10688841.Y, you were found guilty by a jury on 31 March 2015 of the following three charges:

- Charge 1 – indecent assault on a male, involving Complainant E, at some time between 1 January 1976 and 1 June 1976. Complainant E was then aged 12 and a Year 7 boarder at the school. One morning boys in his dormitory were ordered out, four at a time, to a room at the end of the dormitory, wearing only singlets and underpants, for a so-called “medical examination”. In the room were you and two other Catholic clergy. The boys were ordered to look straight ahead and pull their underpants to their knees. You walked to Complainant E, grabbed his penis, held it up, and fondled his testicles for about 60 seconds.
- Charges 2 and 3 – two indecent assaults on a male involving Complainant F during the period from 1 January 1977 to 31 December 1977. Complainant F was then aged 15 or 16, and a Year 10 boarder at the school. He fell asleep on a school infirmary bed where he had been sent in the late afternoon after taking an anti-histamine for a bee sting. He was woken by a group of students brought into the infirmary by you, who then forced the complainant to drink one or two mugs of Milo which you had prepared, which the complainant tasted strong and acrid, so he only drank part of one, hiding his mug. Lights were turned out, and the

complainant fell asleep and awoke feeling groggy, hearing another boy in a bed nearby crying out “What are you doing?” while you stood over the other boy, threatened him verbally, and made him drink another mug of Milo, after which the boy went quiet. Complainant F then observed you going around the beds where other boys slept, lifting blankets and making derogatory comments about their genitals. At Complainant F’s bed you pulled back the blanket, fondled his testicles (Charge 2) and anus (Charge 3) under his pyjamas, and squeezed his testicles and penis together hard, saying words such as “You’re useless”, presumably because the complainant’s penis did not become erect, after which you punched him in the stomach. According to Complainant F, another priest came in as you were lifting blankets on the bed and told you that you must resist, with you replying that “God has made you that way”.

Victim impact statements

- 8 Victim impact statements completed by Complainants B, C, D, E and F were tendered. Furthermore, a victim impact statement completed by the mother of Complainant A was also tendered. A common theme throughout such statements was the devastation that has been caused to the lives of each of the complainants as a result of your crimes. Such devastation is ongoing, with many of the complainants unable to form and maintain stable relationships, experiencing ongoing psychological problems together with alcohol and drug abuse.
- 9 I refer to the victim impact statement of Complainant B, who was the subject of four rapes and a vicious indecent assault by you. He describes that a day does not go by without him recalling the sexual abuse, and he continues to be very angry, not only at you, but also himself for not speaking up. He also describes that such anger has manifested itself in binges of crime, drug taking, and ongoing difficulties maintaining relationships with those he wants to love very much.

- 10 In a similar way, Complainant C describes a combination of anger and depression as a result of your offending. In particular, he describes that such anger and depression has resulted in him committing crimes and becoming involved with the use of drugs. He describes how your actions have turned him into someone he is not, and the person that you have turned him into he hates even more than you.
- 11 Again, Complainant D describes his isolation and shame following your offending. He describes that for many years after the offending he was an aggressive, angry young man, and, as he describes, the only way he is able to handle the upset is to use alcohol to excess and drugs for a period of time. Furthermore, he also has had difficulty forming and maintaining relationships.
- 12 The mother of Complainant A describes how her son's relationship with his siblings broke down shortly after the sexual abuse committed by you. She also describes that from about the age of seventeen he turned to drugs, which caused hardship for other members of his family. She describes only becoming aware of such sexual abuse many years after it occurring. She notes that after her son was expelled from the Catholic school he began to behave badly at home, and on coming home he experienced nightmares, fear of the dark, and a fear of his bedroom door being shut at night.
- 13 Complainant E also describes his ongoing anger at the way you treated him. He feels as though he was cheated of an education as a result of your sexual abuse causing him to ultimately leave the school. He had ongoing problems when his children were at secondary school whether they were exposed at any time to the possibility of being molested like him.
- 14 Complainant F describes that as a result of you sexually abusing him he has ongoing patterns of self-doubt, lack of trust, fear of those in authority, lack of self-confidence, and pessimism, which permeates his daily thoughts, relationships and life. He describes that since his schooldays he has been

tortured by what he refers to as your evil snarl, cruel and torturous treatment of his body, together with the belittling comments you implanted in a young and impressionable mind.

Your personal circumstances

- 15 Your barrister, who also appeared in the earlier trial, referred to and relied on much of the material put to the trial judge at the plea in the earlier trial.
- 16 You are presently aged 61 years old and are the eldest of three children born to your mother. You never knew your biological father, as your biological parents separated either before or soon after you were born. Your mother subsequently married your stepfather, Ron Rapson, when you were eighteen months old, and he became your sole father figure. Your stepfather and mother went on to have two daughters, who became your younger stepsisters.
- 17 Your stepfather was a cruel and violent alcoholic, who never accepted you, and regularly beat you and your mother and the other children. Indeed, your earliest memory of him was being kicked by him when you were aged about four.
- 18 The family was impoverished, and living in the outer suburb of Upwey in a house which was in disrepair, with the children being neither properly fed nor clothed. Your stepfather was the sole breadwinner, and spent most of his earnings on drinking and gambling.
- 19 From an early age you began running away, to the point that you were physically restrained as a little boy, being tied to a clothesline and chicken wire being placed around the veranda. Notwithstanding these restraints you continued to run away, and eventually, at the age of 12, began to regularly seek sanctuary at the home of two different men living in the area, who sexually abused you in return for their protection over a number of years.

Apparently, one of these men was eventually jailed for sexual crimes against children.

- 20 Your secondary education was initially at St Joseph's College in Ferntree Gully from Years 7 to 11, and you completed Year 12 at a Catholic college in Chadstone. On leaving school in 1973 you joined your order as a brother, and thereafter undertook three years of noviciate study at Auxilium College in Lysterfield.
- 21 You completed a Diploma of Education and were assigned to the Catholic college where your offending occurred in 1976, where you spent two years. In 1978 you were assigned to a Catholic school in New South Wales, then in 1979 returned to this State to complete your training for the priesthood, obtaining a Bachelor in Theology and being ordained in 1982.
- 22 You then spent three years teaching at a Catholic college Tasmania, returning in 1986 to the college where the offending occurred as a religious coordinator. You then became the deputy principal there in 1988. You were then transferred back to Auxilium College in 1992 following allegations of sexual abuse which had been made in relation to another student at the same Catholic school where the subject offending occurred.
- 23 In November 1992 you were convicted of three charges of indecent assault and sentenced to a term of two years' imprisonment with a ten month minimum non-parole period. As part of your parole conditions you completed a psychosexual therapy unit course in June 1993.
- 24 In late June 1993 you were again convicted of two counts of indecent assault and were sentenced to a period of imprisonment of 14 months, 12 months of which were suspended under the then s.27 of the *Sentencing Act* 1991. You were ultimately released in September 1993.

- 25 During your period of imprisonment you were defrocked by the Catholic Church and excommunicated from your religious order.
- 26 It would appear that since your release from prison in September 1993 you have led a crime-free life. Over the years you have been employed by Mission Australia as a training and placement officer involved in training adult migrants in literacy, and were promoted to the manager of the central office. You then began a business recycling and buying linen from hotels, which you conducted for three or four years. After that, you were employed as a manager of a dental practice in Armidale in New South Wales, which position you held until the beginning of the committal proceeding in these matters in 2012.
- 27 Prior to the earlier trial, you had been living in Sydney in a de facto homosexual relationship for a period of some 10 years. Your counsel advised me that that relationship has continued until today, despite some initial uncertainty following the last plea hearing when your partner heard details of the offending. Your partner continues to live in Sydney, but you have been in regular contact with him. I was informed that your partner is currently overseas attending a sick parent.
- 28 Your younger sister, who went on to develop schizophrenia, died when she was twenty-one. You have remained close to your eldest sister and her husband (who attended court) and both of whom gave evidence at the plea following your earlier trial. At that time your sister described your stepfather's vicious and violent behaviour towards you, making the point that you grew up to a stage where, in her view, you could have dealt with him violently, but you never did so, and when he died, when you were about thirty-three, you oversaw the funeral arrangements, where you spoke warmly of him.
- 29 Furthermore, she described the relationship with your partner with whom you had lived in Sydney as long-term and loving.

- 30 Your brother-in-law spoke in similar terms, stating that he had never known you to display any violence.
- 31 A further reference was tendered from your sister, Exhibit 1. Such reference is supportive of you, and clearly you have a good relationship with your sister.
- 32 I was informed by your counsel that you had been drinking very heavily leading up to the first trial of the recent trials, and are presently medicated for depression. After the first trial you were remanded in custody from 30 August 2013 following the verdicts, and were ultimately granted bail on 11 September 2014. You have been more recently in custody since 4 March 2014, on which day I revoked bail.
- 33 Your counsel notes that since being imprisoned in August 2013 you appear to have had some type of “breakdown”, and although you were initially released in September 2014 he described you being on an “emotional roller-coaster” since then. Furthermore, your counsel put to the court that your general health has deteriorated and you have been diagnosed with damage to your liver, one malfunctioning kidney, and high iron levels.

Plea of your counsel

- 34 In a very able and balanced plea, your counsel accepted that the five offences involving rape were serious examples of that kind of crime. Furthermore, he also accepted that there were aggravating factors accompanying much of the offending, in that:
- (a) It involved physical and emotional pain and injury caused by the offences.
 - (b) A gross breach of trust was involved: such breach extending not only to that of a teacher/pupil relationship, but also a breach of that relationship between a member of the Catholic clergy and younger members of the Catholic faith.

- (c) Furthermore, you breached the trust of your victims after you had cultivated trust and friendship through the enticement of cigarettes, alcohol, and computer games.
- (d) Each of the complainants has suffered long-lasting impacts on various aspects of their life as a result of your offending.

35 In mitigation of your sentence, he submitted the following:

- (a) Much of the offending was done when you were a young man, and should be viewed in the context of someone who had been traumatised by physical and sexual abuse as a child, and deprived of love. Furthermore, you were the product of the education of the religious order you joined immediately after leaving school. Joining such order required you to take a vow of chastity, which was unrealistic for a sexually functioning person, which was compounded by being a young gay man. Such sexual feelings were seen by your church as evil and unnatural. Much of the time spent at the Catholic school was in socially isolated conditions and setting, and also in circumstances where it was clear that older and more experienced priests were engaging in sexual abuse of students at the school. Your counsel submitted that whilst these matters could not be seen as an excuse, they were features to be taken into account.
- (b) As a result of undergoing the psychosexual therapy unit course in June 1993 there has been substantial rehabilitation, and it is unlikely that you will reoffend. Your counsel also submits that since 1993 you have been involved in a stable relationship, and have been involved in responsible jobs, with no suggestion of any reoffending. In such circumstances it is submitted that specific deterrence should not be an issue when considering what elements are relevant in forming a sentencing disposition.

- (c) Considering that the previous offending dealt with by the Magistrates' Court in 1992 and 1993 involved sentences of terms of imprisonment for offending in relation to the sexual abuse of students at the same Catholic school, the principle of totality is relevant. It was submitted that if all matters had been heard together there would have been some concurrency, and accordingly this must be reflected by moderating the length of individual sentences imposed in this case or by increasing the amount of concurrency.
- (d) You have no prior convictions at the time of the subject offending, although, as your counsel fairly conceded, the weight attached to this sentencing aspect is "limited", given that the subject offences occurred over a number of years (see generally *SD v The Queen* [2013] VSCA 133; *Ryan v The Queen* (2001) 206 CLR 267, and in particular McHugh J at [33]–[34]).
- (e) Because of your ongoing psychological problems, and indeed to some extent your physical problems, the so-called last principle enunciated in *R v Verdins*; *R v Buckley*; *R v Vo* [2007] VSCA 102 has application, in that a period of incarceration will weigh more heavily on you than it would on a person of normal health.

Conclusion

36 The seriousness of your offending, particularly in relation to the anal rapes, is manifest. As is made clear in the victim impact statements, your victims, who ranged in age from about 11 or 12 to the age of 16, have all suffered greatly and continue to suffer greatly as a result of your crimes. In some instances your offending was attended by aggravating circumstances which included cruelty and violence bordering on being sadistic. Throughout the course of your offending you breached the trust that usually attends the relationship between student and teacher; the trust which usually exists between spiritual adviser and recipient of such advice. In particular, you being a then member

of the Catholic clergy also gave rise to great turmoil in each of the complainants, who considered it was just impossible to speak to anyone about such offending at the time.

37 I also consider that, given the way that you induced many of your victims by lulling them into a sense of friendship by the use of sweets, cigarettes and alcohol, and on occasions the use of drugs to stupefy your potential victims, you can be appropriately described as a sexual predator, seeking sexual fulfilment at the expense of these young boys.

38 As noted by the trial judge at the earlier hearing, the explanation proffered by your counsel as to your own deprived and loveless upbringing, together with the sexual abuse you suffered, pales into insignificance in the face of the ruthless sexual exploitation of these victims charged to your care. In these circumstances, your unrelenting sexual exploitation of your victims was so predatory, so deliberate, and so serious, it represents such an incalculable breach of trust that, in my view, principles of just punishment, deterrence and denunciation dominate the sentencing exercise before me.

39 By way of mitigation, I do accept, and take into account, the submission of your counsel that because of your psychological difficulties and, to a lesser extent, your physical difficulties, any period of imprisonment will be more difficult for you than someone who does not suffer from such conditions. I also, to a certain extent, accept the submission that the issue of specific deterrence is not as strong as general deterrence, given your seeming lack of offending since your release from prison in September 1993 following a psychosexual therapy unit course. My concern in relation to specific deterrence is that you have not shown, in my view, any remorse whatsoever for your offending or indeed any insight into the nature of your offending and the consequences of it. I also take into account the principle of totality, bearing in mind your earlier periods of imprisonment in 1992 and 1993.

40 After a consideration of all these matters, I have come to the view that a consideration of the purposes for which this sentence is to be imposed cannot be achieved by a sentence that does not involve your incarceration. I intend to convict you of all such offences.

41 Given the nature of your offending, you will be sentenced as a “serious sexual offender” within the meaning of Part 2A of the *Sentencing Act* 1991, and such status is to be entered in the records of the court.

42 Section 6D of the *Sentencing Act* 1991 directs the court, in determining the length of sentence, to have regard to the protection of the community as the principal purpose for which the sentence is imposed, and may impose a sentence longer than which is proportionate to the gravity of the offence considered in the light of its objective circumstances. In the circumstances of this matter, the prosecution do not seek a disproportionate sentence. After due consideration, I do not intend to order a disproportionate sentence.

43 Pursuant to s6E of the *Sentencing Act* 1991, every term of imprisonment imposed by a court on a serious sexual offender for a relevant offence must, unless otherwise directed by the court, be served cumulatively on any other sentences of imprisonment imposed on the offender at the same time.

44 I also note that pursuant to well-established authority, sentences imposed after a retrial must take heed of the following principle as set out by the then Full Court of Victoria in *R v Chen* [1993] 2 VR 139 wherein it was stated:

“In my opinion the trial judge following upon a conviction on a retrial must, when he comes to sentence, exercise his own judgment and his own discretion. He will do that having regard to the offence committed; to the circumstances of its commission; to the antecedents of the convicted person and to all other relevant facts which are personal to him. In addition he will have regard to the sentence imposed upon the first conviction and he will be conscious of the principle, so called, ‘that unless there is some strong ground there should not be a disparity between the sentence imposed upon persons convicted on the second occasion after a retrial compared with those that were imposed upon them on the first occasion’.”

(At pp83–84)

After considering the sentences of imprisonment imposed on each charge in the earlier hearing, I do not consider there should be any disparity between any sentences of imprisonment and the sentences I intend to impose in relation to each charge (noting that the earlier hearing involved two extra charges).

45 Please be upstanding.

46 MR GINSBOURG: Sorry to interrupt, Your Honour. Can I, just before Your Honour makes the sentence, can I just check a matter; did Your Honour refer to the offending which is the subject of Charge 1 on the indecent assault indictment; this is the offending which occurred at Auxilium College in 197 - - -

47 HIS HONOUR: Yes, I think I did, involving - - -

48 MR GINSBOURG: Sorry, I keep using the wrong charge number, it is Charge 2 on the Indictment ending 8841X.

49 HIS HONOUR: There are three charges there.

50 MR GINSBOURG: That is right.

51 HIS HONOUR: But I dealt with 2 and 3 together, 2 and 3 together, same complainant.

52 MR GINSBOURG: They are different complainants, Your Honour. Your Honour might be thinking two charges involving the same complainant, that was a different complainant, that was in the infirmary.

53 HIS HONOUR: How many charges on Indictment No.10688841Y?

54 MR GINSBOURG: No, it is not .Y, it is .X.

55 HIS HONOUR: Yes, there are three charges there, are there not?

56 MR GINSBOURG: Yes.

57 HIS HONOUR: And one got dismissed.

58 MR GINSBOURG: My learned friend - yes - Charge 3 was the subject of the acquittal. My learned friend and I were not sure whether Your Honour referred to Charge 2.

59 HIS HONOUR: I mentioned Charge 1 involving Complainant C, Charge 2, involving Complainant D.

60 MR GINSBOURG: I am not sure Your Honour referred, with respect, to the facts of Complainant D. Your Honour did refer to the - - -

61 HIS HONOUR: I thought I did. This is the 14 year old reporting to the office after school?

62 MR GINSBOURG: No, that is the one that was the subject of the acquittal. So the 14 year old who reported to the office after detention was the subject of the acquittal and Your Honour may have transposed the facts of that offending with the offending which is the subject of Charge 2. Could I take Your Honour to the Crown - does Your Honour have the Crown opening there by any chance?

63 HIS HONOUR: I have not got the opening, no. So that is in relation to - - -

64 MR GINSBOURG: Indecent assaults. On my copy it is dealt with at Paragraph 13. I am just trying not to name the complainant, Your Honour.

65 HIS HONOUR: No, I appreciate that.

66 MR GINSBOURG: Paragraph 13, attends, with the name - begins with the name of the complainant.

67 HIS HONOUR: Hang on, we might be at cross purposes here.

68 MR GINSBOURG: So I will call him D. That paragraph reads, "D attended Rupertswood Salesian College in Sunbury from Year 7 in 1983 through to Year 11 in 1988", so it is the paragraph that commences in that way.

69 HIS HONOUR: Just let me - so it is - this was in relation to trial No.2, was it?

70 MR GINSBOURG: Yes.

71 HIS HONOUR: Trial No.2, there were - - -

72 MR GINSBOURG: There were three complainants.

73 HIS HONOUR: Three complainants, yes.

74 MR GINSBOURG: Charge 1 was the offending that occurred at Auxilium College in 1976.

75 HIS HONOUR: Hang on, just so I have got this. Yes, Charge 1, yes and I have referred to him as Complainant A, yes.

76 MR GINSBOURG: And Charge 2, which is the offending which we are concerned Your Honour may have overlooked in the sentencing remarks, and that is the offending which occurred in the dormitory, or the accused bedroom, next to the dormitory.

77 HIS HONOUR: And that is listed as Charge 2.

78 MR GINSBOURG: Yes. Can I just hand Your Honour this document?

79 HIS HONOUR: Yes.

80 MR GINSBOURG: It is the offending that is described on paragraph 13 on the page that s open in that document.

81 HIS HONOUR: I might just adjourn briefly and see what this is. Mr Cordy, do you agree with that?

82 MR CORDY: Yes I do, Your Honour.

83 MR GINSBOURG: I should say, my learned friend, Ms Finnegan picked it up, Your Honour, but I thought I should raise it before you announced - - -

84 HIS HONOUR: No, I think it is appropriate to raise it now and I do apologise if I have slipped that in by mistake

85 ##A:S# (Short adjournment.)

86 HIS HONOUR: I thank counsel for that. That seems to have come through right from the very beginning, I am afraid. Be that as it may, ladies and gentlemen, I apologise, I misstated some of the facts. I just want to amend Charge 2 in relation to Indictment C10688841.X. My amendment is in relation to the facts of that particular charge.

87 The facts of that charge involves Complainant D who was a 15 or 16 year old boarder at the school at that time. He recalls that you were very friendly and allowed some of the older students to drink and smoke. In 1987, Complainant D recalls that you would allow him and another student into his room to drink and smoke. You would supply alcohol, consisting of bourbon and coke, to them. One night after lights out, Complainant D was in your room, drank three-quarters of a bottle of Johnny Walker scotch and was smoking cigarettes. Complainant D stated to you that he was feeling quite drunk. You suggested that he have a rest on your bed. Complainant D lay down. You sat beside him on the bed and started to rub Complainant D's leg. You rubbed his leg from his shins to his thigh and then you moved your hand higher and higher until you were rubbing Complainant D.s penis over his jeans; that constituting the offence of the indecent assault.

88 I was at the point where I had asked you to be upstanding please.

89 In relation to Indictment No.C10688841.RT1, I order:

- (a) In relation to Charge 1 involving the rape of Complainant A, you are convicted and sentenced to four years' imprisonment.
- (b) In relation to Charge 2 involving the rape of Complainant B, you are convicted and sentenced to four years' imprisonment.
- (c) In relation to Charge 3 involving the further rape of Complainant B, you are convicted and sentenced to four years' imprisonment.
- (d) In relation to Charge 4 involving the further rape of Complainant B, you are convicted and sentenced to four years' imprisonment.
- (e) In relation to Charge 5 involving the further rape of Complainant B, you are convicted and sentenced to six years' imprisonment. This is to be the base sentence on this indictment.
- (f) In relation to Charge 6 involving the indecent assault of Complainant B, you are convicted and sentenced to a period of two years' imprisonment.

The court directs that 18 months of Charge 1, 18 months of Charge 2, 18 months of Charge 3, 18 months of Charge 4 and one month of Charge 6 be served cumulatively upon each other and upon the sentence imposed in Charge 5, making a total effective sentence of 12 years and 1 month imprisonment.

90 In relation to Indictment No C10688841.X1, I order:

- (a) In relation to Charge 1 involving the indecent assault of a male involving Complainant C, you are convicted and sentenced to a period of imprisonment of four months.
- (b) In relation to Charge 2 involving the indecent assault of Complainant D, you are convicted and sentenced to six months' imprisonment. This is the base sentence on this Indictment.

The court directs that two months of the sentence imposed on Charge 1 be served cumulatively upon the sentence imposed on Charge 2. The total effective sentence is eight months' imprisonment.

91 In relation to Indictment No C10688841.Y, I order that:

- (a) In relation to Charge 1 involving the indecent assault of Complainant E, you are convicted and sentenced to a period of imprisonment of four months.
- (b) In relation to Charge 2 involving an indecent assault on a male, being Complainant F, you are convicted and sentenced to a period of imprisonment of eight months.
- (c) In relation to Charge 3 involving an indecent assault on a male, being Complainant F, you are convicted and sentenced to a period of imprisonment of eight months. This is the base sentence on this indictment.

The court directs that one month of the sentence imposed on Charge 1 and two months of the sentence imposed on Charge 2 be served cumulatively upon each other and upon the sentence imposed on Charge 3. The total effective sentence is 11 months.

92 The court directs that two months of the total effective sentence imposed on the second indictment (C10688841.X) and three months of the total effective sentence imposed on the third indictment (C10688841.Y) be served cumulatively upon each other and upon the sentence imposed on the first indictment (C10688841.RT1).

93 The total effective sentence is 12 years and six months, and I order that there be a non-parole period of nine years and four months. I declare that the 445 days you have served up to today as pre-sentence detention be administratively deducted from this sentence as time already served.

94 Pursuant to the provisions of the *Sex Offenders Registration Act* 2004, and bearing in mind the nature of the offences, I order, pursuant to s.34(1)(c)(ii) of the *Sex Offenders Registration Act* 2004 your name to be entered on the register of sex offenders, with the length of the reporting period being the remainder of your life.

95 HIS HONOUR: Anything to say?

96 MR GINSBOURG: The *Sex Offender Registration Act* provisions provide that sentences are to be served cumulatively unless otherwise ordered. Your Honour has specified orders for cumulation. It would be prudent with respect to specifically order that where Your Honour has not stated that sentences be served cumulatively, it is Your Honour's intention that the sentences be served concurrently.

97 HIS HONOUR: Yes. I will make that statement..

98 MR GINSBOURG: Thank you, Your Honour.

99 HIS HONOUR: In the situation where I have not ordered any sentence to be served cumulatively, such sentences will be served concurrently.

100 Mr Cordy, anything to say?

101 MR CORDY: No, Your Honour..

102 HIS HONOUR: Yes, take the prisoner.

103 Thank you for your assistance again. Very well, ladies and gentlemen, thank you for your attendance. Adjourn the court.

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