

IN THE COUNTY COURT OF VICTORIA

Revised Restricted Suitable for Publication
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AT MELBOURNE  
CRIMINAL DIVISION

CR 13-00669

DIRECTOR OF PUBLIC PROSECUTIONS

v

DAVID KRAMER

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JUDGE: His Honour Judge M.P. Bourke  
WHERE HELD: Melbourne  
DATE OF HEARING:  
DATE OF SENTENCE: 24 July 2013  
CASE MAY BE CITED AS: DPP v. Kramer  
MEDIUM NEUTRAL CITATION: [2014] VCC

## REASONS FOR SENTENCE

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Catchwords:

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<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Crown	Mr B Sonnet	Office of Public Prosecutions
For the Accused	Mr T. Marsh	

## HIS HONOUR:

- 1 David Kramer, you are to be sentenced for five charges of indecent assault and one charge of indecent act with a child under 16. Applicable maximum sentences for these offences are five years' imprisonment for indecent assault and ten years' imprisonment for indecent act with a child under 16. These are the maximum sentences relevant at the time of your offending. The offending made out by the indecent assault charges would attract a higher maximum sentence today. As stated in the prosecution opening, the difference in the charges laid is explicable by legislation amending the Victorian *Crimes Act* in 1991.
- 2 You pleaded guilty before me on 17 July 2013. You committed these offences in the period January 1990 to December 1991. You had come to Australia in late 1989 on a work visa and you were employed as a primary school teacher at the Yeshiva Centre Primary School in St Kilda East at that time. You left Australia in early 1992. Whilst that occurred in the context of complaints to the school about the offences, it is not put that you are in the category of a person who absconded in the face of pending charges. Complaint was not made to the police at that time.
- 3 You returned to Israel and after that went to the United States and lived and worked there. In June 2008 you were sentenced in the United States for serious sexual offending against a child. A sentence of seven years' imprisonment was imposed, with a statutory minimum term set of four and a half years. The offences were committed in March 2007.
- 4 In this country, complaint about these matters before me had been made to police in New South Wales in 1996; but no investigation followed. Ultimately you were charged by Victorian police in December 2011. There was no record of interview. The Crown sought extradition of you, which became legally available upon your eligibility for parole release in the United States in

April 2012. You unsuccessfully opposed extradition. It was granted in October 2012. You remained throughout in United States custody until transfer to Victorian remand custody for these offences on 29 November 2012. The matter was listed for contested committal in the Magistrates' Court. However, you made an offer to plead guilty to these charges in April of this year. On 12 April you entered pleas of guilty in the Magistrates' Court. The matter has then been quickly set down for plea hearing in this court.

5 You receive the benefit of your plea of guilty and the level of co-operation that somewhat unusual history of proceedings shows. Your plea has facilitated the interests of justice. Particularly your four victims have been spared the difficulty of giving evidence about sexual acts against them when they were young boys. I accept that you have developed, over recent years, a level of remorse.

6 At your plea hearing, which ran on 17 July, Mr Sonnet, for the Crown, tendered a written Amended Summary of Prosecution Opening and the victim impact statement of one of the victims. Mr Marsh, for you, tendered a series of documents related to a large number of rehabilitation and education programs in prison in the United States, certificates and other documents related to the sex offender program undertaken by you in United States prison, certificates and documents relating to rehabilitation and education programs in custody at the Melbourne Remand Centre, the forensic psychiatric report of Dr Kevin Ong dated 5 June 2013, your own letter to the court dated 17 July 2013, letters of character reference including by Max Kaltmann, the Jewish chaplain at the Melbourne Remand Centre; it is dated 14 July 2013.

7 I have also considered written submissions on the plea provided to me by both Mr Sonnet and Mr Marsh.

8 This morning I gave leave to re-open the plea hearing and received the victim

impact statement of another of your four victims, the victim of Charges 4, 5 and 6. His brother read that statement in court.

9 The circumstances of your offending are described in the Crown opening, which is Exhibit A. My own summary may therefore be shorter. As stated, you taught at Yeshiva Centre Primary School; that was between late 1989 and early February 1992. You were a well liked and respected member of staff. The boys, including your victims, referred to you as Rabbi Kramer. You had completed rabbinical studies in Israel, but were not ordained. That you were so called was a mark of respect.

10 At the time of offending you were aged 29 to 31 years. Your four victims were young boys, your students at the school, aged 10 to 11 years. The offences against three of the boys were separate, single incidents; they are charged as indecent assaults (Charges 1 to 3). In short, you felt and handled the genitals of each of these boys, through pants or clothing. On one occasion your hand was in the boy's pocket. Each occasion was in the school environment. One was outside your home but that was across the street from the school. Charges 4 to 6 were each committed against the fourth boy. All were in the school environment. Charge 4 is a representative charge, that is representing two incidents of sitting next to the boy placing a jacket over both of your laps and rubbing his groin area. Charge 5 is a single incident of reaching from behind the boy and rubbing, over his underwear, his groin area. You had asked him to remain after class. Charge 6 is another representative charge. There were two occasions. You invited the boy to watch television in the school library. He had been playing basketball after school. In the library you sat him on your lap and, similarly to Charge 5, you rubbed his groin area, putting your arms over his shoulders. It was over clothing.

11 These matters did come to light in early 1992. Your victims disclosed them to some extent amongst themselves. It appears that some told parents of it. When approached by the school, you made some limited admissions

accompanied by the claim (extraordinary, but in my experience often made by those who sexually abuse children) that your victims initiated the conduct. It is not my role to make judgment upon the response of the school authorities. In short, irate parents forced some action. Ultimately you were dismissed, still protesting innocence, and the Yeshiva Centre offered to pay for your return to Israel. You did so return. Mr Marsh put that problems with the extension of your visa played some role in this. He was not challenged on it.

- 12 As earlier stated, the Crown has tendered a victim impact statement by one of the victims. He is the victim of Charge 3. It was read out in court on 17 July. It is short and I am able to repeat the major part of it.

"I believe I was not severely traumatised to a degree where I could not shake off victimhood. I don't see myself as a victim however there is no doubt in my mind that I had my self confidence shattered. There are times when I look back on my life and realise that I had an angry childhood that was not really directed towards anyone purposefully but rather a reaction to what had happened to me. I think this will remain with me though I am functional. I have a certain bitterness and cynicism that makes me despondent at times. Thank goodness I can get over these times and move forward, even if it is slow."

- 13 I was told by Mr Sonnet that other victims were advised of their right to make an impact statement. As stated earlier, I have now received a second victim impact statement. I have read it carefully and it was read in court. It very powerfully states the impact of your offending upon this boy, and upon him into his adulthood. He was bullied at school because of his brave disclosures. He left the school; but his education continued to suffer. He later left home and lived in Sydney. Into adulthood he has encountered difficulties with drug use, gambling and in his private and intimate life. News of your imprisonment in the United States triggered traumatic memories and feelings. He has needed counselling and now receives psychotherapy. I have not been complete. His life has been badly affected.

- 14 I must and do take into account the victim impact of your offences in sentencing you.

- 15 You are a 53 year old man who has no prior convictions. Of course, there is

- the subsequent offending in the United States. That is relevant to such considerations as remorse, rehabilitation and the application of the principle of totality.
- 16 Your family emigrated from Brooklyn to Jerusalem when you were 11 years old. You are the youngest of four. You met and married your former wife there in 1981. You have 11 children, aged 15 to 30 years. They live in Israel. At least some of your family are supportive of you. You were the victim of sexual abuse yourself at the hands of your father's friend in Brooklyn shortly before going to Israel. You were educated in the orthodox Jewish tradition and, although not ordained, you obtained employment as a religious studies teacher at Yeshiva Primary School and you and your family came here in 1989. These offences and their aftermath followed.
- 17 As early intimated, you and your family, in early 1992, returned to Israel. Your marriage broke down and you were divorced in 2000. You moved to St Louis, Missouri in the United States and worked as an office manager. You committed the offences for which you were sentenced in the United States in March 2007. It was serious and intrusive sexual offending against the vulnerable child of friends. It included masturbating the child to orgasm. I have been supplied with a brief court summary.
- 18 Mr Marsh placed emphasis upon your efforts toward rehabilitation in United States prison. In the course of the sex offender program there, you disclosed these offences, those before me, to other participants in the program. You have also undertaken rehabilitation programs in Victorian remand. You have continued religious studies and have been assisted by the Jewish chaplain, Max Kaltmann. Upon release, you will return to Israel. You will likely be deported.
- 19 Forensic psychiatrist, Dr Kevin Ong, interviewed you at the Melbourne Remand Centre. He also had access to materials, including those related to

the sex offender program in United States prison. Dr Ong's report states that you meet the diagnostic criteria for paedophilia. There are no other significant psychiatric or psychological conditions. You exhibit some insight into on-going paedophilic thinking and the seriousness and harm of your offences against children. You expressed to Dr Ong what he describes as appropriate remorse and victim empathy. You are a man of at least average intelligence. Dr Ong's use of structured assessment tools places you in the moderate to low risk of re-offending. He states the desirability of further assistance and support to you.

20 As stated, you plan, upon release, to return to Israel. Your family knows of your offending and situation. I was told that you will live with your parents. You spoke to Dr Ong of preventative strategies which include - I quote from his report - "letting those close to you know about your problematic sexual behaviour so that they can be aware and help to monitor you."

21 Sexual offences against vulnerable children are extremely serious crimes. Mr Marsh, for you, was correct to point out that these offences lack some commonly seen aggravating factors such as violent, demeaning and humiliating sexual abuse, sophisticated long-term psychological grooming, threat and coercion. However, your offences remain a serious and unforgivable betrayal of children's trust and their regard for you. You exploited your position and power over them. Your community trusted you with these children; you were entrusted with their care. The offences were over a relatively prolonged period. Charges 4 to 6 entail a number of sexual acts against the same child.

22 In such cases as this, sentencing considerations of deterrence, both general and specific, denunciation of what you did and your moral culpability are important. On Charges 3 to 6 you are to be sentenced as a serious offender under the provisions of Part 2A of the *Sentencing Act*. I am therefore required on those charges to regard community protection as the principal sentencing

purpose. I am not asked and shall not impose longer than proportionate sentences to achieve that. Section 6E of the Part 2A prima facie requires cumulative sentences. I shall sentence otherwise and impose what I see to be appropriately partial cumulation between the six charges. In doing so, I apply the principle of totality; but also bear in mind the purpose and effect of Part 2A and s.6E.

23 The proper and proportionate punishment must be a total sentence of imprisonment of significant length.

24 However, there are also relevant matters that must moderate that sentence. They include the following.

- 1) Your plea of guilty.
- 2) Having considered the tendered materials and counsel's submissions on this, I accept that you have developed over recent years some insightful and genuine remorse.
- 3) Although guarded, in view of your on-going psycho-sexual disorder and expected return to Israel without formal supervision or assistance, I see you as capable of rehabilitation.
- 4) I must be mindful that I am to sentence you as without prior convictions at the time of these offences and must sentence on the basis of the particular circumstances of these offences, not influenced in an improper way by your later offending in the United States.
- 5) I give what I see to be appropriate weight to the age of these offences. Such delay is not uncommon in cases of offending against children and in itself, should not be given undue weight. Further, as put by Mr Sonnet, you have re-offended in the same way during the period since these offences. However, I find that some consideration should be given to the steps towards rehabilitation which I find you have made in

the time that has passed since your arrest and then imprisonment in 2007.

6) I should also apply in an appropriate way the principle of totality, given the sentence you have served in United States. You have been in custody now for almost six years since arrest in August 2007. Application of totality to your sentence is made more difficult by the time passed between the two pieces or periods of offending, about 15 years, and perhaps also by the fact that you have been sentenced in another jurisdiction. However, I find that I am obliged to moderate to some extent this sentence in view of your United States sentence in order to meet the totality principle. There must be an attempt to reflect your total offending and criminality over the time.

25 I agree with the submission of Mr Marsh that the moderating or mitigating matters identified may particularly be reflected in a lower than usual minimum term.

26 Such moderating factors must be balanced against the seriousness of this offending and, because of that, the sentencing considerations I have earlier raised.

27 Ultimately, I have found the proper sentence of you to be as follows.

28 You are sentenced on Charge 1 to nine months' imprisonment; on Charge 2 to nine months' imprisonment; on Charge 3 to nine months' imprisonment; on Charge 4 to 15 months' imprisonment; on Charge 5 to nine months' imprisonment; on Charge 6 to 21 months' imprisonment. I direct that three months of the sentences imposed on Charges 1, 2 and 3, four months of the sentence imposed on Charge 5 and six months of the sentence imposed on Charge 4 be served cumulatively upon the sentence for Charge 6 and upon each other.

29 That is a total effective sentence of three years and four months. I direct a minimum term of 18 months to be served before eligibility for parole. I direct, under s.18, pre-sentence detention of 457 days. I direct that you be registered as a sexual offender under the *Sexual Offenders' Registration Act*. I direct a mandatory term of reporting under that legislation for life. Those directions will be stated in the records of this sentence. It will also be recorded that you have been sentenced as a serious offender on Charges 3 to 6. Had you not pleaded guilty to these matters, I would have imposed a head sentence of five and a half years with a minimum term of three and a half years.

30 I make this comment. Sentencing on matters such as this sometimes, perhaps often, does not meet the expectations of those hurt by the crimes committed. It is my duty and obligation to sentence on the particular circumstances of the offending before me and in accordance with the relevant legal principles and considerations. I have attempted to do that. I would not wish people to think that I do not feel great personal sympathy and sensitivity to those hurt by this offending. The opposite is the case.

31 Are there other orders I need to make, Mr Sonnet?

32 MR SONNETT: In relation to the forensic sample order.

33 HIS HONOUR: Is it a retention sample?

34 MR SONNETT: It's obtaining a sample order.

35 HIS HONOUR: It's a retention - well I make that order.

36 MR MARSH: It's not opposed, Your Honour.

37 HIS HONOUR: It's not opposed. The reasons are the seriousness of these offences, that there is other - - -

38 MR SONNETT: Your Honour, it's an application for the taking of a sample.

39 HIS HONOUR: Very well, I'll state the reasons in any event, they apply just the same.

40 MR SONNETT: I think you indicated on the previous occasion, Your Honour, that you thought the order should be made.

41 HIS HONOUR: What class offences are these for the registration documents? I remember you saying they were Class 2.

42 MR SONNETT: Yes. They're contained in the submissions, Your Honour, the document Summary of Prosecution Submissions at Paragraph 10 in relation to the registration under the relevant Act and contained in the summary.. Class 2 offences.

43 HIS HONOUR: Is that right, Class 2?

44 MR SONNETT: Yes.

45 HIS HONOUR: It's in your original summary, am I right?

46 MR SONNETT: Yes. Paragraphs 56 and following. Class 2 offences and the relevant reporting period is one for life.

47 HIS HONOUR: The documents for registration under that legislation have been prepared now. I think you were raising the matters of the taking of a forensic sample, is that right?

48 MR SONNETT: That's so, Your Honour.

49 HIS HONOUR: It is not opposed. My reasons for granting the sample include the seriousness of these offences, the seriousness of the subsequent offending in United States. It is well known that forensic samples such as this are a valuable investigative tool in offending like this. It would be irresponsible of me not to make the order that you supply a forensic sample. That means that at a time to be arranged in custody you will be required to supply a

sample of your saliva, you do that by the use of a cotton swab inside your mouth. If you co-operate in that, that is the end of it. If you do not co-operate in that, a blood sample may be taken by injection and reasonable force used to do that.

50 Is there anything but for the registration?

51 MR SONNETT: No, Your Honour.

52 HIS HONOUR: You heard me say during my sentence that you are to be registered as a sex offender under the *Sex Offenders' Registration Act*. That requires a number of things, the production or supply of personal details, movements and the like. I have a document here, which runs some pages, which explains your obligations under that legislation. I am going to get my staff to take that document down to you. There is another shorter document which acknowledges service of the larger document. You will be asked to sign that simply acknowledging you have received the main document, you may sign it as you choose or not.

53 MR MARSH: Would Your Honour excuse me from the Bar table to accompany your associate to the dock, sir?

54 HIS HONOUR: Yes, if you wish to speak to your client.

55 MR MARSH: Thank you, Your Honour.

56 HIS HONOUR: Thank you. I think you said, Mr Sonnet, there is nothing else we need to do.

57 MR SONNETT: That's so, Your Honour.

58 HIS HONOUR: Thank you for your assistance both today and the other day. Thank you for your assistance both today and the other day, Mr Marsh.

59 MR MARSH: Thank you, Your Honour.

- 60 HIS HONOUR: The prisoner can be taken into custody..
- 61 MR SONNETT: If I could just had up a copy of those orders that will need Your Honour's signature.
- 62 HIS HONOUR: I'll sign those now, I don't think he needs to remain while I sign those. Does Mr Kramer need a copy of this order? Can you attend to that?
- 63 MR MARSH: I can and he will also need a copy - - -
- 64 HIS HONOUR: He's been taken into custody now, I don't think it's necessary for me to bring him back whilst I sign it, I've made the order.
- 65 MR MARSH: No, Your Honour. I'll need to give him the reporting obligations as well that he's acknowledged.
- 66 HIS HONOUR: Yes. That can happen after. Thank you. Adjourn the court.

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