



COURT MARTIAL

Citation: *R. v. Leading Seaman C.M. Ritchie*, 1997 CM 39

Date: 8 December 1997

Docket: S199739

Standing Court Martial
Washington State, United States of America
Maritime Pacific Headquarters Detachment Whidbey Island

Her Majesty the Queen

- and -

Leading Seaman C.M. Ritchie, accused

Before: Commander R.F. Barnes, M.J.

Warning

Subject to sub-section 486(3) and 486(4) of the *Criminal Code* and section 179 of the *National Defence Act*, the court has directed that the identity of the complainant and any information that would disclose the identity of the complainant shall not be published in any document or broadcast in any way.

SENTENCE

(Orally)

[1] Please, be seated. March in Leading Seaman Ritchie, please. You may break off and sit with your defence counsel.

[2] Now the case law, both civilian and military, with respect to sexual assault sentences varies greatly. It is virtually impossible to draw a scale of sexually assaultive conduct and assign a correspondingly appropriate sentence or punishment to each item. This is no doubt due to the fact that such offences may be committed in an infinite variety of ways and proper sentences must take into account the character and background of the offender and of course the direct and indirect consequences of the conviction and sentence.

[3] Brief summaries of sentencing cases can be misleading because they do not contain all the circumstances of the offence or the details or background of the offender. A review of the recent sexual assault cases provided by counsel and the summaries provided by the Weekly Criminal Bulletin highlight the dangers of relying on brief summaries.

[4] With respect to the offence in this case, it occurred in the bedroom of the victim and it commenced when she was asleep. This is an aggravating circumstance. I find, however, it must be remembered that Leading Seaman Ritchie was well aware that two other adults were present, although sleeping, in the living room not far away from that bedroom and the door was left opened. It is therefore most improbable that his intentions went beyond what actually occurred in the bedroom. He did stop after all, after some effort by the victim, said he was sorry and he left.

[5] The fact that Petty Officer X. would not know that other adults were still in the house may explain in part why she did not cry out at the time. The victim in this case, Petty Officer X., was a US Navy servicewoman and the offence took place in the US Navy on a US Navy station where Leading Seaman Ritchie was part of the guest Canadian Forces Detachment, although integrated into the command. This is an aggravating circumstance, however I've not given it any great significance because of the integration into the command.

[6] There was no rank or authority issue raised on the facts of this case. The adults in the X. house that evening were all at the working rank level. They were all on the first name basis and it was in a social setting. The assault itself cannot in my view be described as at the lowest end of the scale. However, in terms of the range of conduct covered by the offence of sexual assault, it was, I consider, towards the lower end of the range or scale.

[7] The offender, Leading Seaman Ritchie, I find, is a young man of previously unblemished character. His upbringing in a caring family emphasized honesty, candour and respect for others. And this is seen in the character evidence not only through Mr Ritchie in court but the other letters and the witnesses that were heard and read this

morning. What is also noteworthy is that in Exhibit 19, Lieutenant-Commander Nolan, a prior commanding officer, indicates facts from which I infer that Leading Seaman Ritchie was perhaps unsophisticated and naive particularly when it came to dealing with the opposite sex.

[8] I do not think for a minute that he is a danger to other women nor is he or was he any sort of a sexual predator who planned to force sexual intercourse on Petty Officer X. that night. That simply does not arise from the facts and the character evidence.

[9] In his own words, Leading Seaman Ritchie said he made a huge mistake. I find he acted very much out of character on this occasion. The prosecutor also mentioned in his submissions that there was no remorse shown in this case. I disagree. It is Leading Seaman Ritchie's very strong values from his family upbringing that led to his obvious remorse during the police interview. His sense of remorse and his values, including honesty, candour and virtue, led to his confession.

[10] The fact that subsequently he pled not guilty cannot be and is not treated as an aggravating factor. Everyone is entitled to plead not guilty. He was remorseful and cooperative with the police once they tapped into his personal values. He deserves credit for this and I consider it to be a mitigating factor. Leading Seaman Ritchie, of course, cannot receive any further benefit or credit which normally goes along with pleading not guilty because he did not do so, but this is not an aggravating factor, it's simply the absence of another mitigating factor.

[11] I've also considered the effective Canadian Forces Administrative Order, or whatever it's called now in its electronic form, number 19-36, paragraph 22, on the likelihood of the administrative release of Leading Seaman Ritchie from the Canadian Forces as a result of the conviction for sexual assault.

[12] And finally, I considered that he is a relatively young first offender who acted completely out of character, as I indicated, on this occasion. Having reviewed all the evidence and the sentencing summaries, I do not consider that specific deterrence, that is to deter Leading Seaman Ritchie, requires any emphasis in this case. I accept that he is a decent, hard working and caring person and this conduct will not recur. No emphasis needs to be placed therefore on his reformation or rehabilitation.

[13] General deterrence on the other hand in this case, I find, requires something more than a minimal punishment. Would you stand up, Leading Seaman Ritchie. This court sentences you to imprisonment for a period of 60 days. This sentence is passed at 1552 hours on the 8th of December 1997.

Counsel:

Captain B.W. MacGregor, Assistant Deputy Judge Advocate Victoria, Counsel for Her Majesty the Queen

Major J. Parr, Deputy Judge Advocate Victoria, Assistant Counsel for Her Majesty the Queen

Dwight M.D. Stewart, Swinton & Company, Barristers and Solicitors, Vancouver, British Columbia, Counsel for Leading Seaman C.M. Ritchie

Jody E. Aldcorn, Articled Student, Swinton & Company, Barristers and Solicitors, Vancouver, British Columbia, Assistant Counsel for Leading Seaman C.M. Ritchie