

STATE OF WISCONSIN CIRCUIT COURT TAYLOR COUNTY

STATE OF WISCONSIN, SENTENCING

Plaintiff,

vs.

CASE NO: 00-CF-24

ROBERT PETERSON,

Defendant.

HONORABLE GARY L. CARLSON, JUDGE PRESIDING

APPEARANCES:

MARA JOHNSTON, District Attorney, appeared on behalf of the State of Wisconsin;

JOHN HANSEN, Attorney at Law, appeared on behalf of the Defendant, Robert Peterson.

August 22, 2002

Lisa M. Weber, RPR, CRR

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PROCEEDINGS

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2 THE COURT: State of Wisconsin,
3 plaintiff vs. Robert L. Peterson, 00-CF-24.
4 Appearing in this matter is Mara Johnston,
5 district attorney for Taylor County, Wisconsin.
6 Robert Peterson personally with his attorney,
7 Mr. John Hansen. This is the date and time set
8 by the court for sentencing after revocation. A
9 presentence investigation has been completed and
10 filed with the court. I assume the parties have
11 received copies of that. Madam district
12 attorney, are there victims that have to be
13 notified of the proceedings and are you aware of
14 any victim that wishes to make statements to the
15 court today?

16 MS. JOHNSTON: Your Honor, the victim
17 was notified of this hearing, and she is present
18 in court. I believe the victim impact statement
19 was provided to the court back on the original
20 sentencing date in August of 2000. I'm sorry, I
21 know that her mother is also present. She was a
22 juvenile at the time of this offense and the
23 mother would like to make a statement at the
24 appropriate time.

25 THE COURT: That's perfectly fine.

1 You have received a copy of the presentence, I
2 take it?

3 MS. JOHNSTON: I have.

4 THE COURT: Mr. Hansen, have you
5 received the presentence and if so, does
6 Mr. Peterson have any belief that there are
7 factual errors that should be brought to my
8 attention?

9 MR. HANSEN: The answer is, yes and
10 yes; but before we address those, I would like to
11 make an oral motion to the court concerning the
12 revocation itself.

13 THE COURT: Ms. Johnston, it is kind
14 of without notice to her. She doesn't know what
15 you are going to say nor do I. Tell me what your
16 motion is and maybe we should make a decision as
17 to what we should or should not do.

18 MR. HANSEN: The motion would be for
19 the court to reconsider its decision revoking the
20 defendant.

21 THE COURT: Was it my decision to
22 revoke the defendant?

23 MS. JOHNSTON: Yes.

24 THE COURT: Go ahead. On what basis?

25 MR. HANSEN: Based on some research

1 that I've done in Wisconsin case law which
2 suggests to me that the point I was trying to
3 make at that time, which is that the agreement
4 and the issue of compliance with it or not should
5 be evaluated according to the contract
6 principles; and although the behavior of
7 Mr. Peterson was apparently in violation of one
8 or more of his probation rules, it was not in
9 violation of the actual terms of the agreement.

10 I've located a case State vs. Barney,
11 B-A-R-N-E-Y, 213 Wis 2d 344 with a set of facts
12 that are remarkably similar to those of this
13 case. In that case, there was a breach of
14 probation rules and the court there did not
15 accept the defense contention that the defendant
16 wasn't aware that the probation rules were
17 strictly key to the agreement. However, in
18 Barney, the written agreement itself did
19 specifically and clearly say in addition to what
20 the rules on this agreement are, you will be
21 bound and held accountable to all rules that will
22 be imposed on you subsequently.

23 In fact, there was a colloquy at the
24 time the agreement in Barney was entered in court
25 where the court made clear to him that that was

1 the case. Now, I know that in the hearing where
2 the agreement was approved in this case, and I
3 have read the transcript of that; and as the
4 court mentioned at the hearing that we had
5 concerning revocation, a somewhat stern warning
6 was given to the extent, you are walking on thin
7 ice, and that is true.

8 However, that is a different thing
9 than having the agreement itself or the
10 admonitions of the court specifically informing
11 Mr. Peterson, Robert, that in addition to all of
12 the rules set forth on the agreement itself, that
13 he would have to also strictly comply and be
14 bound within the terms of the agreement by any
15 rule that probation might place upon him in the
16 future. Now, I think that is a big difference
17 between here and Barney. I would also note in
18 Barney the trial court was overturned because
19 apparently that agreement also included a
20 provision that the court was to consider
21 alternatives to revoking the agreement; and of
22 course, this agreement did not have any such
23 term.

24 I would also note the case of State
25 vs. Scott, S-C-O-T-T, 230 Wis 2d 643. That is a

1 case which has to do with plea agreements, but I
2 think it gives some indication of the kind of
3 standard that is involved here. Basically in
4 that case, the state apparently reneged on some
5 portion of a plea agreement, and the court in
6 reversing the result pointed out that contract
7 principles are applicable.

8 There, of course, was a plea here, so
9 I think we have both the non-prosecution
10 agreement principles as well as the plea
11 agreement principles; and the court stated in
12 Scott, we are mindful, however, that the analogy
13 of plea agreements to private contracts is not
14 precise. The constitutional concerns
15 undergirding a defendant's contract rights in a
16 plea agreement demand broader and more vigorous
17 protection than that according to private
18 contractual commitments. I think what the court
19 is basically saying in that regard is, yes,
20 contract principles apply; but we actually have
21 to go even beyond that in protecting the person's
22 rights when we look at contract law, but they
23 have basically more rights than that.

24 I would also note the case of State
25 vs. Jones and again, this is a non-prosecution

1 agreement, and the agreement we are dealing with
2 is fairly categorized non-prosecution and plea
3 agreement; and the court indicated there, a court
4 can vacate that type of agreement where a
5 material and substantial breach has been proven.
6 A party seeking to vacate the agreement must
7 prove the breach by clear and convincing
8 evidence. I'm not saying that that evidentiary
9 burden necessarily applies here, but I think the
10 substantial and material breach, I believe does;
11 and again, as I noted before and I would note
12 again that the alleged breach was not a violation
13 of law of any type nor did it involve any sort of
14 harm to anybody. What has been alleged, not
15 illegal behavior, not causing any kind of harm,
16 not anything that was post described by the terms
17 of the agreement itself and the agreement
18 contained a number of terms. I don't know if I
19 would say they were stringent per say but
20 comprehensive enough to attend and complete the
21 sexual offenders class, avoid committing crimes,
22 no contact with the victim, such things as that.

23 It is vague as to the extent that the
24 agreement is key to probation. In one sense, it
25 states the state can bring an action to revoke it

1 if there is a revocation hearing request by the
2 department. It also says the state may proceed
3 even if there is no revocation, so obviously the
4 terms of the agreement as drafted by the state do
5 not of themselves key the revocation of this
6 agreement directly to revocation of parole, and
7 the last paragraph of the agreement basically
8 says, Mr. Peterson is required to follow the
9 terms of this agreement; and if he does, then he
10 is entitled to the benefit of the bargain that he
11 made.

12 I would note additionally that the
13 bargain that he made was certainly no freebie. I
14 believe the end result, if he is deemed to have
15 completed it successfully, is that the charge be
16 reduced to a misdemeanor, and he would be
17 required to plea to that which certainly would
18 provide the court with a substantial -- to the
19 extent that the court is unhappy with
20 Mr. Peterson's lack of strict obedience to the
21 probation rules, there is ample opportunity there
22 for the unhappiness of the court to be reflected
23 in sentencing if the agreement was deemed, which
24 I think it should be, deemed to be complied with
25 because he did comply with everything that is on

1 that agreement; and the problem with rules of
2 probation that came along later, quite a bit
3 later actually and are not specifically
4 incorporated by reference anywhere in that
5 agreement.

6 So I guess I'm urging that the
7 combination of contract principles and due
8 process principles, which are obviously invoked
9 here because there was reliance, large reliance
10 in entering that plea that the court should
11 reconsider its decision and reverse itself.

12 THE COURT: You recited a case, State
13 vs. Jones but not the case citation. I think you
14 need it because there has to be about ten million
15 State vs. Jones out there.

16 MR. HANSEN: I'm sure there are many.
17 217 Wis 2d 57.

18 THE COURT: Thank you. Ms. Johnston,
19 any comment on this?

20 MS. JOHNSTON: Certainly, Your Honor,
21 I was not prepared to be arguing this motion, and
22 I think it has probably been six years since I
23 have gone through a comprehensive review of
24 contract law, but I believe what is necessary for
25 a contract is a meeting of the minds, and I think

1 it was every person's intent on the day that the
2 agreement was entered into back in August of 2000
3 that Mr. Peterson were to obtain the advantage of
4 the deferred entry of judgment agreement if he
5 successfully completed probation. He did not.
6 He was revoked on probation. Mr. Hansen has
7 argued that a strict reading of the wording of
8 this agreement should be applied and therefore,
9 somehow it should not be revoked.

10 The court did revoke it back on
11 July 2. Mr. Hansen made the same argument at
12 that time. And what strikes me is that paragraph
13 seven of that agreement specifically indicates
14 that if the defendant engages in behavior which
15 subjects him to revocation proceedings, the state
16 would make a motion to revoke the deferred
17 prosecution agreement. I think that that
18 language clearly provided Mr. Peterson with
19 notice that if he engaged in any type of behavior
20 which would upset his probation agent to the
21 point where revocation proceedings were
22 initiated, he would not obtain the advantage of
23 this agreement. That would include any
24 conditions of his probation that his probation
25 agent put upon him.

1 That is also indicated in paragraph
2 six, if the defendant successfully complies with
3 the terms of his probation ordered in case number
4 02-CM-02, only if he complied with those
5 conditions of probation would he obtain the
6 advantage of this agreement. He did not. He was
7 revoked; and therefore, this agreement should be
8 revoked as well. Mr. Hansen has made an
9 interesting argument, but I don't think that
10 these specific facts and that this specific
11 agreement is something that can be interpreted in
12 any other way than that the parties wanted
13 Mr. Peterson to successfully complete probation
14 in order for this agreement to also be fulfilled.
15 Since he didn't do that, I think the court took
16 the appropriate action back on July 2 in revoking
17 the agreement.

18 MR. HANSEN: If I might just briefly.
19 The state urges that there was a meeting of the
20 minds, but all we have to go on as is the case in
21 just about every contract case is what it says in
22 the contract, and paragraph seven does say if the
23 defendant engages in behavior which subjects him
24 to revocation proceedings, the state would make a
25 motion. It doesn't say that that is a basis for

1 having the motion. Granted, it says the state
2 will make a motion. I don't think that there is
3 anything wrong with that language. It certainly
4 doesn't directly say that any institution of any
5 type of revocation proceedings is going to be
6 automatic grounds for revocation. It just plain
7 doesn't say that.

8 THE COURT: Doesn't it then leave it
9 to the sound discretion of the court to grant or
10 deny the motion?

11 MR. HANSEN: I believe it does.

12 THE COURT: Didn't the court exercise
13 its sound discretion when it granted the motion?

14 MR. HANSEN: As to the grounds for
15 granting or denying the motion, I don't think
16 paragraph seven really says anything at all. It
17 is basically warning him if the probation agent
18 becomes unhappy, the state is going to make a
19 motion; but it doesn't provide any kind of
20 guidance at all as to whether that motion should
21 be granted or not. Again, when it says the state
22 would be permitted to do this, which has to refer
23 to making the motion, even if probation was not
24 ultimately revoked, it is separating itself from
25 the issue of revocation versus the institution of

1 revocation proceedings, much the same thing; and
2 I'm not here to criticize some of these
3 draftings, but when you are dealing with an
4 agreement that affects somebody's life to this
5 magnitude, I believe the drafter should be held
6 to a strict standard as is the case in contract
7 law; and certainly the combination of those that
8 applies here is ambiguous and must be resolved
9 against the drafter. Now, paragraph six --

10 THE COURT: I've heard all this. You
11 don't have to continue. I just asked if you had
12 any rebuttal. Now, you are restating your
13 argument. I have heard it all once.

14 MR. HANSEN: Just the fact that
15 paragraph six she left out a critical word, terms
16 and conditions of probation that were ordered,
17 past tense. In the other case, there were terms
18 and conditions that were ordered in that case;
19 but the court as a part of the sentencing
20 proceeding, this kind of ambiguity and nothing on
21 here which explicitly states every single rule
22 that may be applied in the future by the
23 probation agent. If it said that, I would have
24 no argument at all. It doesn't say that and it
25 is ambiguous if the state wishes to interpret it

1 to say that but it doesn't say that; and since it
2 doesn't say that, the allegation that the state
3 has made that are alleged to being breeched
4 cannot be deemed. So because a combination of
5 strict contract law and the extra protection of
6 due process mitigates against that.

7 THE COURT: Motion is denied. I'm
8 satisfied State vs. Barney has very little
9 application to this case. State vs. Barney dealt
10 with two claims. One where the defendant was
11 attempting to withdraw its plea because he
12 claimed he did not understand what was
13 effectively a deferred prosecution agreement, and
14 the court was satisfied that should be denied.
15 But what the court in Barney did do is it said
16 the trial court erred because the division
17 agreement involved there specifically provided
18 that if it came back to court, then the court was
19 to consider whether there were any, quote,
20 reasonable and appropriate alternatives, unquote,
21 to revocation.

22 So the court of appeals said since the
23 record didn't show that the court had, the trial
24 court at that time had done anything in that
25 regard, it remanded it to the trial courts so the

1 trial courts would review if there were other
2 reasonable and appropriate alternatives to
3 revocation. The court of appeals in that case
4 specifically withheld any decision on the issue
5 of whether or not all diversion agreements have
6 to contain a provision as to whether or not trial
7 courts should consider alternatives.

8 I think it is appropriate that they
9 withheld that because it is illogical to make
10 that assumption in truth because it basically
11 gives a defendant two kicks at the cat for
12 probation to succeed. One of the things the
13 probation department has to do is make a decision
14 whether or not there are alternatives to
15 revocation when they make the decision if there
16 should be a revocation.

17 So if the court were required for some
18 reason to conduct a hearing to determine if there
19 are alternatives, it would be redoing exactly
20 what the department had done. Mr. Peterson would
21 have had an opportunity at the time that the
22 department was seeking to revoke his probation to
23 have that decision reviewed on appeal through the
24 agency right up to the head of the department;
25 and then from there on, to a certiorari review

1 with the court which apparently Mr. Peterson did
2 not do. So the court is satisfied that certainly
3 under these circumstances, there is no particular
4 reason why the court should have to at the time
5 of this consider whether or not there are
6 alternatives, but that is also not the argument
7 that Mr. Peterson is making.

8 I don't think there is any argument
9 that Mr. Peterson is making that he did not
10 understand the terms of the deferred prosecution
11 agreement. It is in writing. It was signed. It
12 does not, in the court's opinion, indicate any
13 ambiguity at all as a matter of fact and you
14 cannot get into the arguments Mr. Hansen is
15 making unless you first find that a contract is
16 ambiguous. If you find it is ambiguous, you can
17 review it. By making this argument, I'm not
18 conceding contract is the issue here; but even if
19 it were here, this prosecution agreement is not
20 ambiguous and I think Mr. Peterson should be held
21 to the terms of -- I don't think, as Ms. Johnston
22 has stated, that there is any question that if he
23 had his probation revoked in 00-CM-2, the state
24 would move to revoke this agreement and they did.

25 Now, Mr. Hansen argues, well, that is

1 okay, that they can do that but granting that, it
2 is not automatic. Of course, it is not
3 automatic. We held a hearing as to whether or
4 not I should grant Ms. Johnston's motions to
5 revoke the deferred prosecution. Argument was
6 made. Testimony was probably heard or at least
7 exhibits were received. Somehow the court got
8 the information from probation and parole,
9 arguments were made and a decision was made.

10 Now, so long as the court in
11 exercising its discretion applies the correct law
12 to the facts and shows some reasoning in its
13 process, those discretionary decisions are upheld
14 by courts of appeal. That is what judges do
15 every day to motions. That's what the court is
16 doing today with respect to Mr. Hansen's motion.
17 I'm considering it but I'm denying it because I
18 don't believe the law is applicable.

19 The court is satisfied that the
20 correct decision was made when the court in the
21 exercise of its discretion granted the district
22 attorney's motion to revoke the deferred
23 prosecution agreement, and I believe that that
24 decision still stands. The defendant plead
25 guilty to second degree sexual assault of a child

1 contrary to Wisconsin Statutes 948.02(2). We are
2 now here for sentencing. I have received the
3 presentence. Are there any factual errors the
4 defense wishes to advise the court that would
5 affect sentencing?

6 MR. HANSEN: Yes, Your Honor.

7 THE COURT: Briefly tell me what they
8 are.

9 MR. HANSEN: There is at least
10 implication and perhaps more than that at several
11 points in this presentence report that the sex at
12 least at one point between Mr. Peterson and JKR
13 was not consensual and maybe even forced. To
14 that, we strenuously object. That wasn't the
15 case. I would note he has not been convicted of
16 anything that involves force or lack of consent;
17 and in fact, the sex that did take place was
18 entirely and 100 percent consensual. He has
19 maintained that throughout and that is the case.

20 There are things that I note in the
21 transcript of the August 2000 proceedings which
22 basically tend to corroborate that including
23 someone else's -- another friend's version of
24 what happened in a car, and I think the court
25 probably recalls that from that hearing and it is

1 in the transcript. Other people besides Robert
2 were claiming that what was claimed in terms of
3 lack of consent wasn't true. The timing of this
4 also suggests that. It wasn't until many months
5 after Robert broke up with JKR that this was even
6 reported. So we definitely object to any kind of
7 claim, any consideration of that idea by the
8 court given the fact that the state -- if the
9 state believed that was the case, obviously the
10 state should have charged that and they didn't.
11 So I think that's our problem with that.

12 Its been, I guess, claimed that
13 Mr. Peterson doesn't have remorse for what
14 happened and it has been claimed that he, in
15 speaking with the presentence writer, used some
16 language. If he did, it was taken out of
17 context. Mr. Peterson does have regret for what
18 happened. He does question the extent to which
19 his involvement with the victim caused the
20 entirety of all of the problems; but to the
21 extent that what he did caused any problems for
22 her at all, he regrets that over and above his
23 regret for what the consequence has been to him.
24 He does regret any problem that is caused to JKR
25 by his actions.

1 MS. JOHNSTON: Are these factual
2 errors?

3 THE COURT: I think these are
4 arguments as to what the implications are.

5 MR. HANSEN: What --

6 THE COURT: Just tell me what the
7 factualls errors are. You can make your argument
8 about sentencing. Thank you, madam district
9 attorney.

10 MR. HANSEN: He denies that he ever
11 gave her any drugs. His job situation is
12 misrepresented somewhat. Prior to the time that
13 he was jailed during the revocation process, he
14 had worked at Weather Shield continuously for a
15 year and a half; and the reason that he hasn't
16 gone back to work yet was not because he was
17 waiting to see what happened today, it was
18 because he had to reapply, which he did once when
19 he was still in jail and again several weeks ago;
20 and in fact, he has been rehired; and if he is
21 not in jail or prison, he would be starting on
22 Monday. I think that may have just been a
23 miscommunication but that is the status of his
24 job situation.

25 THE COURT: Is that it, Mr. Hansen?

1 May the district attorney make her argument now?

2 MR. HANSEN: Yes, Your Honor.

3 THE COURT: Thank you, Mr. Hansen.

4 Ms. Johnston, what do you think the court should
5 do here today?

6 MS. JOHNSTON: Your Honor, certainly
7 at sentencing there are three primary factors the
8 court has to look to. The first of which is the
9 gravity of the offense. The victim at the time
10 of this offense was 15-years-old. Her version of
11 events, as indicated in the presentence
12 investigation, indicate that she believes this
13 was a forceable incident and she did not consent
14 to that contact. Her version of events
15 illustrates the gravity of this offense and the
16 impact can be determined by reviewing her
17 mother's observations, that after the assault her
18 personality changed drastically. She became
19 involved in drugs. She began stealing and she
20 attempted suicide. The state believes this is a
21 very serious offense and the gravity should be
22 considered by the court.

23 But more importantly is the character
24 of the offender. Mr. Peterson was offered a
25 break at the time of his original sentencing. He

1 was only one month past his 19th birthday at that
2 time. He is now 21. By reviewing the
3 presentence investigation, it becomes apparent
4 that the defendant has a juvenile record. After
5 he became an adult, he continued to violate the
6 law. He was offered an opportunity to prove
7 himself by being placed on probation for theft
8 and entering into this deferred entry of judgment
9 agreement on the sexual assault case.

10 He had the opportunity not to be a
11 felon by completing his probation successfully,
12 completing this agreement successfully. He chose
13 not to follow the rules. He was revoked from
14 both probation and this agreement. He appears to
15 have no respect for authority. He continues to
16 violate the law, which is shown not only by his
17 criminal record, but also by his frequent and
18 continued use of drugs which he freely admits to
19 his probation agent, who was preparing the
20 presentence investigation.

21 In addition, contrary to what
22 Mr. Hansen has indicated, the defendant has not
23 showed any remorse whatsoever for this offense.
24 When he was asked by the preparer of the PSI for
25 his version of events, he stated regarding the

1 victim, quote, she was a whore before I met her.
2 Now, clearly his character does not bode well in
3 his favor if that is his attitude toward this
4 offense.

5 The third factor that the court should
6 consider is the need to protect the public. The
7 defendant has committed numerous offenses. He
8 was offered the opportunity of the deferred entry
9 agreement and probation, but he couldn't do it.
10 Clearly, the public needs to be protected from
11 this young man who at his young age has been in
12 court for at least five offenses other than this
13 one and admits to having next to 30 sexual
14 partners. He admits to alcohol and drug abuse.
15 The mother describes him as, quote, a lurking
16 vulture. He was on probation and revoked.
17 Putting him back on probation for this offense
18 would be inappropriate. He has shown no signs
19 that he would respond well to rehabilitation,
20 which would be available outside of an
21 institutional setting. The action is quite
22 serious and it has a lasting negative impact on
23 the victim. Placing him on probation would
24 unduly depreciate the seriousness of the offense,
25 and there is a serious need to protect the public

1 from his further criminal activity.

2 The state is not convinced that
3 Mr. Peterson has any desire to become a law
4 abiding citizen, and he has shown throughout his
5 life a complete lack of respect for the law. The
6 state is concurring at this point with the
7 recommendations of the PSI. This is not a truth
8 and sentencing case because the offense occurred
9 prior to December 31 of 1999. The state is
10 asking the court to sentence the defendant to
11 eight years in the Wisconsin State Prison System,
12 to require him to pay a \$500 fine plus court
13 costs and to pay any restitution that is still
14 owing to the victim.

15 THE COURT: Does the victim or anyone
16 on her behalf wish to make a statement to the
17 court? Your name for the record.

18 TERESA RAKOVEK: I am her mom.

19 THE COURT: Would you like to come up
20 here and do it or do it from back here?

21 TERESA RAKOVEK: I would like to sit,
22 if that is okay.

23 THE COURT: I would ask that you do
24 speak loud enough so the court reporter can hear
25 you. If she interrupts you because she can't

1 hear you, don't get mad, just speak louder.

2 TERESA RAKOVEK: I very much, very
3 much wish to speak to the court today for my
4 family and in particular for Jerilyn. Jerilyn
5 was 15-years-old when Robert raped her. That was
6 in January when she was 15 years and three months
7 old. It was such a bad profound change in
8 Jerilyn that I couldn't figure it out for a long
9 time. I tried talking to her. My husband and I
10 tried to be with her and work with her and figure
11 out what was going on. We took her to a
12 psychologist. At the time, she said I won't talk
13 to him. He is a man. We didn't know what that
14 meant at the time. The psychologist, I believe
15 we had ten sessions in there, and he said she
16 won't open up. At the time then once we finally
17 started talking, Jerilyn, she was so despondent.
18 I would sit outside her room at night and pray
19 for this child because she was such a mess and we
20 could not figure out what was going on.

21 By mid-summer she was in such bad
22 shape mentally that she wanted to kill herself.
23 She was sitting scratching with a scissors on her
24 wrists at the time; and when we were talking, I
25 said what is going on; and she said, I had sex

1 with Robert; and I said, why, why did you do that
2 and she said, I didn't want to. She said, he
3 made me.

4 At that time, we had called the police
5 and had her taken into Norwood because she was a
6 mess. At that time also our insurance covered
7 most of all of that, all the counseling we had
8 done in putting her in Norwood, which Robert
9 would have had to pay also if our insurance
10 wouldn't cover it, so he got off there on that.

11 We come from a family that works hard
12 and love our family and don't do drugs and don't
13 do anything that you are not supposed to do. I
14 asked her why at one point, why she didn't tell
15 me sooner what had happened. She said he said if
16 we broke up that he would kill me and anybody
17 else that I was with. She was 15. What was she
18 supposed to do at the time? That is why she was
19 such a mess for so long before we started
20 figuring out what was going on.

21 And then at one point she said, mom,
22 he has a list of girls that he has done this to
23 and the dates that he has had sex with the girls.
24 She said there must be 20 or 30 names on this
25 list. He was what 17 and a half, 18 at the time.

1 My word. For one thing, who would keep such a
2 list? It is beyond me. After the trial, his
3 brother Eddie and cousin Danny called to ask if
4 they could stop. I said, yes, they could stop at
5 the time. Eddie had said that he was hoping that
6 we didn't hold it against him for what Robert had
7 done, that he was aware of what Robert had done
8 and that at times he would try to get Jerilyn
9 away from Robert because he knew what Robert was
10 like; and when I brought up that list at the
11 time, Eddie said he didn't know anything about it
12 but Danny quickly chimed in, oh, there must be 40
13 names on it.

14 It is -- I don't know what to say, it
15 is just weird. I very much believe that Robert
16 is a predator, and I think that he is a lying
17 lurking vulture. I think he is very smooth. He
18 comes across as this nice guy and then he gets
19 girls right where he wants them and he does
20 whatever he wants and he tries to make it sound
21 like, like this is something we want or
22 something, ridiculous, absolutely ridiculous. He
23 has no consideration for what happens to these
24 girls and what happens to their families when
25 this happens.

1 We are the parents of four daughters.
2 I think statistics now say one out of every four
3 girls gets raped. He fits the statistics
4 perfectly. We personally know of five other
5 girls that he has had sex with. Girls that have
6 troubled lives, some of them at least, a couple
7 of them big trouble in their lives. I don't
8 think he has done anything wholesome or hearty as
9 far as society in being with people. I believe
10 he is sick, and I believe we don't need him in
11 our area and neither does anybody else.

12 At the court when he was sentenced
13 originally, that lawyer tried to make it look
14 like it was Jerilyn's fault, that she was coming
15 on to him and she was whatever and like he said
16 at the presentence investigation, she was a whore
17 before I met her. She had never had sex before
18 he met her. That was ridiculous. That lawyer
19 tried to make it like it was her fault, and I
20 thank you for saying get real at the time. That
21 is what you told that lawyer at the time.

22 Now this one is trying to say, well,
23 there is this technicality or that technicality.
24 I don't understand all the technicalities. What
25 I believe is what is right is right and Robert is

1 a creep; and whatever the technicality is, he is
2 very guilty. He doesn't deserve to be walking
3 around and doing this to people. I think he has
4 hurt many, many people. I'm sure if he gets to
5 walk around free, he will just continue because I
6 think that he -- that is the pattern of Robert.
7 I think he is a creep, and I think he should be
8 put away for as long as he can be put away.

9 THE COURT: Thank you, ma'am.

10 CARRIE BEST: The victim would also
11 like me to say a few words on her behalf if that
12 is all right with the court. For the record, my
13 name is Carrie Best. Jerilyn would just like me
14 to relay to the court that she feels very sorry
15 for the other young women that Mr. Peterson has
16 assaulted in the same manner that he did her,
17 that he treated the same way. Especially the
18 ones that are too afraid to come forward and tell
19 the court what happened to them and their
20 situations.

21 She asks that the court consider the
22 gravity of the crime and how much it has affected
23 her and her family and the community, and she
24 also prays that Robert is not allowed and can
25 make a conscious decision never to treat another

1 woman the way he treated her.

2 TERESA RAKOVEK: May I have one more
3 comment?

4 THE COURT: Jerilyn, is that your
5 statement what she said?

6 JERILYN RAKOVEK: Yes.

7 THE COURT: Madam, this isn't a round
8 robin. We can't go on forever. What is it you
9 want to say?

10 TERESA RAKOVEK: When he got called
11 back in last time when his probation was revoked
12 and we left and we were standing by Patty Krueger
13 at the time and his family came out of court, his
14 sister looked right at Jerilyn and snarled and
15 said, what goes around comes around.

16 MR. HANSEN: I will object.

17 THE COURT: I sustain the objection.
18 What a sister said is not relevant here or what
19 the brothers allegedly said either. There is
20 someone that is raising their hand. This isn't
21 an open hearing and I don't take testimony from
22 everybody. I'm sorry, you can't make any
23 statement.

24 MR. HANSEN: Who was raising their
25 hand?

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THE COURT: Some gentleman in the second row, and I'm not going to hear from him.

THE COURT: Mr. Hansen, do you have any argument you want to make on behalf of your client?

MR. HANSEN: Apparently the individual raising his hand was my client's brother, but I guess if the court is not going to consider --

THE COURT: This isn't an open hearing. It is an open hearing but it is not a public session where people may comment. I will hear from the parties, their attorneys and the victim. Those are the people I hear from. The rest is in the presentence. Go ahead, Mr. Hansen.

MR. HANSEN: I would like to briefly call a witness.

THE COURT: No. We don't have time for a witness, Mr. Hansen. If this is your attempt to get around the fact that I don't want to hear from other people, it is a shallow attempt.

MR. HANSEN: I have a witness subpoenaed and that would be one of the probation agents that supervised Robert during the time of

1 his probation. And if I were allowed to call
2 her, she would testify that sometime around
3 December of 2001 notwithstanding the rules that
4 prohibited contact with minors, she gave him
5 permission to have a minor, age 17, living in his
6 house for a period of time.

7 She would say that there were terms
8 and conditions placed on that but she
9 nevertheless did allow him to have a minor living
10 in his house. That would be several months prior
11 to the time of the time when he became friends
12 with Lisa Zondlo.

13 THE COURT: And who is the agent that
14 you subpoenaed?

15 MR. HANSEN: Sue Klemmon.

16 THE COURT: Is she here? Would you
17 state that, madam, as an offer of proof; is that
18 correct?

19 MS. KLEMMON: Yes.

20 THE COURT: All right. Then I will
21 accept that offer of proof.

22 MR. HANSEN: Additionally, she would
23 also say that that was approximately the time
24 when he had successfully completed the sex
25 offender group course and she was generally

1 relaxing some of the rules such as curfew.

2 THE COURT: Correct, Ms. Klemmon?

3 MS. KLEMMON: To the best of my
4 knowledge, yes.

5 THE COURT: I will accept the offer of
6 proof, Mr. Hansen.

7 MR. HANSEN: Thank you.

8 THE COURT: Your further argument.

9 MR. HANSEN: That may not be good
10 chronologically but Robert is here today because
11 he had contact with a person, Lisa Zondlo, who is
12 16-years-old not 15 as it says in the report so
13 that is another error, he says about eight times
14 or so of a strictly platonic nature. He was well
15 aware at that point of what the law required him
16 to do and not do with regard to sex of certain
17 ages. He had no intention of doing anything
18 sexual, did not do anything sexual and
19 specifically avoided being in situations where
20 something like that might happen.

21 It certainly was stupid on his part to
22 take any kind of risk with such huge things at
23 stake but bottom line is what got him here is
24 that he was basically working his job, paying his
25 bills, for the most part behaving himself and do

1 what everybody else does except for that thing.
2 That thing wasn't a crime. It wasn't a violation
3 of law. It wasn't something that caused any kind
4 of harm to anybody, and I respectfully am
5 submitting it wasn't a sinister thing either. It
6 was just basically a strictly platonic
7 friendship, a person that had been through the
8 courts, knew what he could do and couldn't do
9 legally and behaved himself as a perfect
10 gentleman.

11 That doesn't excuse what happened
12 three years ago, but I would note that what
13 happened three years ago was when Robert was
14 17-years-old, we have about a two-year age
15 difference between Robert and the alleged victim.
16 It may be unfortunate but boyfriend/girlfriend
17 relationships between people in that age bracket
18 are all too common, and we respectfully submit
19 that that is what was going on here and that is
20 all that was going on here; and again, if the
21 state believed it was something worse than that,
22 I think the state had the obligation to go ahead
23 and charge that and see if it could be proven. I
24 don't think --

25 THE COURT: They did charge that.

1 MR. HANSEN: Not lack of consent or
2 force.

3 THE COURT: I think the original
4 charges were second degree sexual assault, which
5 is without consent and with force.

6 MR. HANSEN: Second degree sexual
7 assault of a --

8 THE COURT: 940.225 sexual intercourse
9 with a person without consent, without use of
10 threats or violence, two separate counts. This
11 was amended to this charge. The original charges
12 were. It was an agreement to reduce it to this
13 one.

14 MR. HANSEN: I guess that is the
15 point. The state dropped the charge --

16 THE COURT: No. No. Let's not say
17 they dropped the charge. You have been involved
18 in plea agreements. You know there is a give and
19 take. It is not drop the charge. There is an
20 agreement to enter a charge to something else.
21 It is not the same as dropping the charge.
22 Continue.

23 MR. HANSEN: It was apparently
24 amended.

25 THE COURT: I wanted to make the

1 record clear as to what really happened. Go
2 ahead.

3 MR. HANSEN: The point is the same on
4 that one. It has not been proven that it was
5 anything other than consensual sex with someone
6 that was too young. Too young by a half year or
7 something like that, I guess. In any case, it is
8 our position that it was a boyfriend/girlfriend
9 dating. They dated for several months. The
10 presentence report indicates that they dated from
11 December '98 to '99 at a point in time when
12 Robert was 17-years-old. He was then brought
13 into court. Apparently he had some kind of
14 involvement with others in some property crimes
15 at that point; but since the time that he was in
16 court on August of 2000, basically the making
17 friends with somebody that is too young is it,
18 nobody hurt, no crime committed, no law broken.

19 I guess I'm not going to say his life
20 has been perfect but it certainly has been
21 average and uneventful. Prior to the time he was
22 put in jail, he was going to work. He was doing
23 his job. He was behaving himself, staying out of
24 trouble except breaking that probation rule.
25 Completed his sex course. This urging of the

1 idea that because he may have had numerous other
2 partners, I think is off the point. It has not
3 been alleged that any -- in fact, the presentence
4 report indicates as far as the writer can tell
5 those were age appropriate, age appropriate and
6 consensual, and I don't really know what that has
7 to do with anything. It was perfectly legal
8 behavior, complying with the law and by enlarge
9 complying with most of its numerous rules of
10 probation for almost the entire term of the
11 probation and the deferred prosecution agreement.

12 I think the court needs to take into
13 consideration that he was 17 at the time this
14 happened, and he did have somewhat of a troubled
15 youth as is reflected we think more or less
16 fairly in the presentence report, and since then
17 he has broken one rule by becoming too friendly
18 with one person that was too young, age 16, at
19 least to the extent that probation was concerned
20 about it. I think the recommendation, and I'm
21 not hear to criticize people's work necessarily,
22 but part of this presentence report I think is
23 good. It has good information and evaluation on
24 background and such, but my sense is this report
25 is written with somebody that had decided before

1 they started evaluating and examining the
2 history, where they wanted to go with it, and it
3 is basically shaped into something to make him
4 sound as bad as possible as opposed to inform the
5 court about this person. It doesn't say that he
6 was working solid for a year and a half before he
7 was put in jail on a revocation. It doesn't say
8 that he was given permission to have a minor live
9 in his house by the previous agent to the one
10 that pursued revocation. It doesn't indicate
11 that that agent was satisfied enough with his
12 progress in the class that she was beginning to
13 relax some of the rules. None of those things
14 are in here.

15 It's a waste of prison space to put
16 Mr. Peterson in prison. Since the time he was in
17 court in August, yes, he broke one probation
18 rule, ran a fault with his probation agent, no
19 doubt about that. He has been doing remarkably
20 better as indicated in the report than he had
21 been doing in the past. Sending somebody like
22 this to prison may well make him a victim in the
23 prison system. And it is almost certain, except
24 for him breaking one of the rules in the last
25 four years, he can be a productive citizen, pay

1 his bills. I believe at this point he has paid
2 all of his restitution and so forth or at least
3 most of it.

4 I don't want to put it in terms of
5 giving him another chance, but I really think
6 these recommendations are excessively harsh given
7 his age and what happened and what has happened
8 since, and the court has to take all of that into
9 consideration, and I would suggest perhaps some
10 jail time as much as he has some difficulty with
11 probation. I don't know that this appears to be
12 a situation where he was so out of control in
13 observing the rules that there is just no way
14 probation could work. It would seem that it was
15 working except for some misunderstanding. I'm
16 very certain that Mr. Peterson, given the
17 relaxation of the rules and what he had been
18 allowed to do already, did not believe that
19 having a few strictly platonic, friendly contacts
20 with somebody who was 16 would result in him
21 getting revoked from either probation or the
22 deferred prosecution agreement.

23 Certainly now being a convicted felon
24 having sat the imposed and stayed jail sentence
25 for the theft, 90 days, I think it would be good

1 reason to believe that he could follow not just
2 almost all of the rules that he would have on
3 probation but all of them, and I would urge the
4 court to do just that. I don't believe this is
5 some kind of evil, dangerous person. It is
6 basically a kid who is in the process of growing
7 up and except for a couple breaking of rules that
8 didn't involve crimes or hurting anybody, he has
9 been behaving himself and been a productive
10 member ever since August of 2000. That is two
11 years. I think he should receive some
12 consideration for that. I don't see that prison
13 does him or anybody else any good. That
14 concludes my remarks, Your Honor.

15 THE COURT: Mr. Peterson, anything
16 that you want to say or any reason why the court
17 should not impose sentence at this time?

18 THE DEFENDANT: I'm really ashamed of
19 what happened; and if I could take it all back,
20 it definitely wouldn't have happened. That's it.
21 Thank you, Your Honor.

22 THE COURT: Thank you. Does the
23 district attorney have any rebuttal?

24 MS. JOHNSTON: No.

25 THE COURT: I believe Robert is

1 correct when he says that if he could take it all
2 back, he would. Largely because now he is
3 sitting here. I have read the presentence report
4 that was prepared. I find it quite thorough. I
5 have listened to the testimony, the offer of
6 proof and I have heard the arguments of the
7 victims. We do have to be clear that what the
8 court is sentencing the defendant on is a second
9 degree sexual assault of a child 948.02(2)
10 violation. Not the original charges that were
11 filed in this case which was the second degree
12 sexual intercourse without consent by use of
13 threat or force, which is a more serious crime
14 under Wisconsin law.

15 The crime that we are dealing with
16 here today essentially amounts to what many
17 people in the past used to call statutory rape
18 defined under Wisconsin law as having sexual
19 intercourse with a person who has not attained
20 the age of 16 years. It does not involve any
21 requirement to show force or threat or use of
22 force. I think that has to be clear here.

23 I note the presentence makes some
24 comments as to members of Mr. Peterson's family
25 not believing that he is guilty of the crime

1 because they don't believe that he forcibly raped
2 JKR. Well, he didn't have to forcibly to be
3 charged with this crime. What he has to do is
4 that as a person considered by the law to be an
5 adult to be someone who has taken advantage of a
6 juvenile sexually. He has done that.
7 Unquestionably. There is no question about that
8 aspect of what happened here today. He did do
9 that. Whether or not it was by force or
10 whatever, is irrelevant.

11 It should also be noted, however, that
12 the Wisconsin legislature in its infinite wisdom
13 when they created 948.02 of the statutes gave it
14 the same potential penalty structure as a
15 forceable rape, a class BC felony with the same
16 maximum penalty structure available to the court,
17 which I believe is 20 years in the state prison
18 system. So the legislature when it created this
19 statute was of the opinion that the actions of a
20 person like Mr. Peterson is taking advantage
21 sexually of a juvenile was as serious as a
22 forceable rape of another person.

23 Now, the district attorney has recited
24 correctly three primary factors that a judge is
25 to consider when a judge is imposing sentence.

1 Gravity of the offense, character of the offender
2 and the need for public protection. I think the
3 court in making the decision about this charge
4 can concur with the legislative decision that
5 this was a very grave offense.

6 In taking into consideration a number
7 of factors, such as the past record and
8 personality of the defendant, I do have some
9 problems with his character. I clearly have
10 problems with his attempt to minimize the offense
11 or to shift the blame for the offense to the
12 victim or her family or the reference that he
13 makes to the victim as some kind of an excuse
14 that, quote, she was a whore before he met her,
15 unquote. Mr. Peterson just doesn't get it. Is
16 he the sole blame for all of the problems that
17 this child has had since then? Possibly,
18 possibly not.

19 But certainly from her point-of-view,
20 from her recollection of the events as they
21 occurred, they are certainly events which would
22 be traumatic enough in her mind of any child of
23 that age to cause exactly the types of problems
24 that she has had since. The court is well aware
25 of any number of studies that have been conducted

1 which indicate that the type of sexual activity
2 of a minor by a person who is an adult can cause
3 precisely these problems. So if the court were
4 having to make a guess, the court's opinion would
5 be that the problems of the victim are more
6 likely than not to be caused by the acts of the
7 defendant, and I think he is fully culpable for
8 what he did.

9 He knew what he was doing. He knew he
10 was wrong. He knew it was against the law and
11 yet he did it. Once more, there is no indication
12 in this record that I have other than the
13 statement that he made now and what his attorney
14 said that there is any real remorse. In my
15 opinion, the only remorse that Mr. Peterson has
16 is that he got caught and that he is here today
17 facing a judge who has the ability to make the
18 next 20 years of his life pretty miserable. That
19 is what he is remorseful about.

20 Is he remorseful about what he did to
21 this child, no? He calls her a whore. She is
22 that kind of girl. Trust me, these are not the
23 kinds of things to say when a person is facing a
24 sentencing for this kind of act. The last thing
25 a defendant should ever attempt to do when he or

1 she will be facing a judge is try to shift the
2 blame to the victim. Particularly when he is the
3 adult and she is the child.

4 Mr. Peterson has a long history of
5 drug abuse. He apparently has, at least there
6 are allegations which I admit that he disputes,
7 that he has a long history of sexual activity
8 with young people. I'm unhappy with the fact
9 that back on November 8 of last year,
10 Mr. Peterson clearly stated that he should not
11 get involved with anyone under the age of 18.
12 Within six months of his taking that test with
13 Mr. Fox and making that realization, he is
14 involved with a 15 or 16-year-old girl.
15 Mr. Peterson shows no insight, no insight into
16 what his behavior is or what he does. This is
17 dangerous.

18 This situation for Mr. Peterson will
19 not change in the future unless there is some
20 intervention now. He not only sexually assaulted
21 the victim here, he introduced her to drugs; and
22 he sent her down a path, in my opinion, that has
23 caused great hardship, heartache to her and her
24 family. He is a risk to the public
25 unquestionably in my mind. There is a need for

1 public protection.

2 The legitimate state interests are
3 rehabilitation, deterrence and punishment.

4 Rehabilitation means developing the insight to
5 understand that you committed a crime and making
6 the determination because of that insight that it
7 will not happen again because it is wrong. That
8 requires in you an understanding of your problem
9 and why what you do is wrong. You have no such
10 insight. You do not have that understanding
11 today. Rehabilitation is not a factor in which I
12 hold great hope.

13 The second interest is deterrence to
14 make sure that you don't do this again and to
15 send a message to others that you just as an
16 adult do not engage in this kind of activity
17 consensual or otherwise. Even if it was
18 consensual from Mr. Peterson's point-of-view, it
19 was illegal. There is a need to deter others by
20 letting them know what happens when people
21 violate this law. And finally, punishment. He
22 did wrong. When you do something wrong, whether
23 you are a child and you break into your mother's
24 cookie jar and steal cookies when she said you
25 can't do it or whether when you do something like