



Concerned Women for America of Kansas

Background

In February of 2000, defendant Matthew Limon was an 18-year-old adult residing in a state-operated residential school for the developmentally disabled when he committed the crime of sodomy upon a child who was 14 years of age and a resident of the same facility.

Testimony at trial indicated that the victim, M.A.R., suffered mild retardation and did not function at the level of a “normal” 14-year-old. Limon’s conviction in this instance represented his third conviction for performing sodomy on a child. Limon’s first two convictions were for aggravated criminal sodomy. As a result, Limon had a criminal history score of “B” under the Kansas Sentencing Guidelines. His two previous convictions were for aggravated sodomy.

Due to the serious nature of Limon’s prior convictions, he was statutorily required to register as a sex offender. He so self-registered until July of 2002. Although required to register as a sex offender at the time that the offense occurred, defendant Limon failed to properly register himself as a sex offender with the sheriff of Miami County.

Defendant had been repeatedly disciplined for sexual misconduct with other residents at Lake Mary Center.

In February of 2000, police investigated a complaint that Limon committed sodomy against a child, M.A.R., at Lake Mary Center. The victim, M.A.R., told police that Limon performed oral sex on him and that when he asked the defendant to stop, he did. Although the victim was mildly retarded and this statement represents the victim’s only description of the act, for the purpose of Limon’s plea, the prosecutor stipulated to the act being “consensual.” There is no evidence in the record the child victim, M.A.R., was a homosexual.

Defendant admits performing sodomy on M.A.R. and, when confronted with his actions, stated that he committed “indecent liberties with a 14-year-old.”

Defendant was ultimately charged with criminal sodomy pursuant to K.S.A. 21-3505(a)(2). Defendant filed a motion to dismiss, arguing that he should have been charged with unlawful sexual relations pursuant to K.S.A. 21-3522. He further argued he could not be charged under K.S.A. 21-3522, as it applied only to heterosexuals. This, he argued, violated his Equal Protection Clause rights.

The district court rejected the defendant’s arguments. Limon was tried to the court on one paragraph of stipulated facts. Defendant was convicted based on those facts and, due to his criminal history score, was sentenced to 206 months imprisonment. Now convicted of his third person sex felony, Limon currently has a criminal history score of “A,” the highest possible criminal history score in Kansas. Defendant appealed his conviction,

again asserting that his Equal Protection Clause rights had been violated. He also argued that his criminal history score, which was the result of juvenile adjudications, should not have been considered in sentencing him.

This Court rejected the defendant's arguments, finding that strict scrutiny did not apply as homosexuals are not a "protected class." This Court relied on *Bowers v. Hardwick* in making this finding. Based on these findings, this Court found that the defendant's Equal Protection Clause arguments failed.

This Court also noted that the defendant failed to raise an Eighth Amendment argument and that this Court could not comment on the wisdom of K.S.A. 21-3522 because such comments were best "left to the legislature in our governmental system of separation of powers."

The defendant filed a petition for review with the Kansas Supreme Court, which was denied. Defendant then filed a petition for writ of certiorari with the United States Supreme Court. The United States Supreme Court granted the defendant's petition for certiorari, vacated his conviction and sentence, and remanded to this Court for reconsideration in view of its opinion in *Lawrence v. Texas*.

The Law

In Kansas, the age of consent for sexual activity is 16. Any sex involving children under 16 is, therefore, illegal and deemed harmful under the law. The two crimes for sexual activity with a child age 14 that are relevant to discussion of the Limon case are:

- *Criminal sodomy*, defined in part as sodomy with a child who is 14 or more years of age but less than 16 years of age. This crime is classified as a severity level 3, person felony. (note: sodomy applies to both hetero- and homosexual activity)
- *Unlawful voluntary sexual relations* (commonly known as the Romeo and Juliet law), defined as engaging in voluntary sexual intercourse with a child who is 14 years of age but less than 16 years of age and the offender is less than 19 years of age and less than four years of age older than the child and the child and the offender are the only parties involved and are members of the opposite sex. This crime is classified as a severity level 8, person felony.

The Arguments

Limon was convicted of criminal sodomy but is arguing he should have been convicted instead of unlawful voluntary sexual relations, which results in a lighter penalty. However, by law, the crime of unlawful voluntary sexual relations does not apply to sexual relations between a man and a boy. This, Limon claims, is a violation of his Equal Protection Clause rights. He further claims that the U.S. Supreme Court's opinion in *Lawrence v. Texas*, the adult homosexual sodomy case, should cause the Kansas court to vacate his conviction and/or sentence.

Some excerpts from the appellant's brief:

- Teenagers have a constitutionally protected right to have sex. "It is well established that teenagers — including gay teenagers — have a due process liberty interest in being free from state compulsion in personal decisions relating to marriage, procreation, contraception, family relationships, and sexual intimacy."
 - **Result: Age-of-consent laws may be lowered.**

- Homosexuals are a suspect class under the Equal Protection Clause. “Matthew continues to assert ... that sexual orientation is a suspect or quasi-suspect classification that triggers heightened scrutiny.”
 - **Result: If the appellant’s argument is held, then the Legislature would be unable to define marriage or enact laws prohibiting polygamy, incest, and bestiality.**
- “The fact that the governing majority in a state has traditionally viewed a particular practice as immoral is not a sufficient reason for a law prohibiting the practice.”
 - **Result: Legislatures would have no right to use morality as a basis for law.**

The state argues *Lawrence v. Texas* is not applicable to the facts of the Limon case because:

- Limon’s crime involving a child took place in a state institution, not in the privacy of a home as in *Lawrence*.
- Limon’s crime involved a child, not two consenting adults as in *Lawrence*.
- There is no privacy interest such as the one in *Lawrence* because Limon’s case was a sexual offense against a child.

Furthermore, **Limon’s Equal Protection Clause arguments fail as a matter of fact and law** because:

- They require dramatic and unwarranted court action to invalidate the democratic process.
- They do not apply because courts have never declared homosexuals a suspect class under the Equal Protection Clause.
- They falsely attempt to require strict scrutiny analysis when only a rational basis test applies to this case.
- Legislatures can legitimately legislate morality as has been done in most criminal laws, while this is not a function of the judicial branch.
- The Eighth Amendment is inapplicable to the facts of this case because Limon was sentenced based on his criminal history score from three convictions involving sexual offenses with children.

Finally, the Kansas Court of Appeals cannot extend the law of *Lawrence v. Texas*.

Limon has failed to establish that the state cannot legislate morality, to prove that his Equal Protection Clause rights have been violated and to demonstrate why the courts — and not the Legislature — should change the law.

Summary

- The separation of powers is at stake. If the court overrules Kansas law, it will be legislating from the bench.
- This case could impact all laws involving the criminality of having sex with children. In other words, all age-of-consent laws could be moot.
- This case could impact marriage laws, opening up marriage to homosexual, polygamist, and incestual marriages.