PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. E.C.M.*, 2013 NSPC 126

Date: 20131220
Docket: 2469457, 2469458, 2469459
Registry: Pictou

Between:

Her Majesty the Queen

v.

E.C.M.

SENTENCING DECISION

Restriction on publication: It is ordered that any information that could identify the complainant shall not be published in any document or broadcast or transmitted in any way.

Judge: The Honourable Judge Del W. Atwood

Heard: 20 December 2013, in Pictou, Nova Scotia

Charge: Sections 151, 152 and 271 of the *Criminal Code of Canada*

Counsel: Patrick Young for the Nova Scotia Public Prosecution Service
Rob Sutherland for E.C.M.

By the Court:

[1] The Court has for sentencing E.C.M. E.C.M. was tried in relation to indictable charges of sections 152, 151 and 271 of the *Criminal Code*.

[2] I will note that there is a publication ban in effect in relation to the identification of the victim, A.B., in this case.

[3] The Court heard evidence over a course of two days. The Court rendered guilty verdicts on September 24, 2013; that decision has been reported as 2013 NSPC 86.

[4] The mitigating factors are that, based on the pre-sentence report before the Court and based on the assessment prepared by Dr. Connors, it is clear that, after a lengthy period of substance abuse, E.C.M. developed a very strong work ethic, and has been gainfully employed in a well paying and responsible position with [identifying information redacted] for some period of time.

[5] It is clear to the Court based on E.C.M.'s statement to the Court today that

he is extremely apologetic and is beginning to acquire insight into the nature of his conduct.

[6] The aggravating factors are that E.C.M. seriously abused a position of trust in relation to a young girl who regarded E.C.M. as a father or step-father figure.

[7] The abuse in question occurred at E.C.M.'s home, where E.C.M. was required to ensure the safety and well-being of A.B. but, in fact, took advantage of her desire for affection and converted this young person into an object rather than a human being.

[8] The victim impact was obviously significant. As I stated in the decision of *R. v. Stewart*, 2013 NSPC 64 at para. 20, the Court can and, indeed, must infer victim impact even when victim impact statements are not presented to the Court.

[9] In this particular case, there was a victim-impact statement presented to the Court by A.B. Some of it has been read into the record by Mr. Young, the prosecutor. Mr. Young properly characterized some of what was said by A.B. in her victim-impact statement as being the typical sentiments of victims of child

sexual abuse. The unfortunate reality is that this sort of victim impact can be said to be typical only because of the continuing prevalence and incidence of child sexual abuse in society; it is because of this sad fact, taking into account all of the principles of sentencing, particularly the principle of proportionality, considering the seriousness of the offence and the degree of responsibility of offenders who commit offences of sexual predation against young persons, that courts must reemphasize, through substantial terms of incarceration, the abhorrence with which society regards the sexual abuse of young children.

[10] Notwithstanding that dark period in her life, the victim-impact statement that has been filed by A.B. shows that the victims of child sexual abuse, through the help of their families, and through appropriate intervention and counselling, can strive to overcome the terrible suffering that they have endured and I'll take a moment just to read what I believe to be a very poignant and remarkable portion of A.B.'s victim impact statement; she says:

> I do believe my life can get better and that I feel better and I am learning to do that and learning who I am. I know I am stronger than I was. I have had some great support along the way.

[11] That sort of support was the sort of support that A.B. was entitled to expect

from E.C.M.which she did not receive.

[12] The seriousness of the offence and E.C.M.'s degree of responsibility over a lengthy period of time satisfy me that a federal penitentiary sentence is appropriate. Applying the principles of sentencing laid out by our Court of Appeal and, indeed, in this Court in cases such as *R. v. Stewart*, *supra*, I do believe that a penitentiary sentence is appropriate.

[13] I do believe that the sentencing recommendation, which is a joint submission put before the court by counsel–perhaps not a true joint submission in the sense of an authentic pre-trial *quid pro quo*–is nevertheless one to which the Court ought to defer in accordance with the principles set out by the Court of Appeal in *R. v. MacIvor*, 2003 NSCA 60; therefore, the sentence of the Court, E.C.M., will be that, in relation to the section 151 count, you serve a period of three (3) years in a federal penitentiary.

[14] There will be, to go along with that, a section 109 order prohibiting you from possessing any firearm other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition and explosive substance

commencing today's date and ending thirteen years hence.

[15] There will also be an order prohibiting you from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.

[16] There will be a primary-designated-offence DNA collection order in relation to that charge; furthermore, the warrant of committal will be endorsed in accordance with the provisions of section 743.21 of the *Criminal Code* that, while subject to that warrant of committal, you are to have no contact or communication, either directly or indirectly with A.B. or members of her immediate family.

[17] With respect to the issue of the duration of the SOIRA order, the Court observes that E.C.M. was convicted of all three counts that were tried by the Court. Two of those counts have obviously been stayed judicially on application of the Crown, with the consent of Defence counsel, in accordance with the principles set out by the Supreme Court of Canada in *R. v. Keinapple*, 15 C.C.C. (2d) 524. Sub- section 490.013(2.1) of the *Criminal Code* states that an order made under subsection 490.012(1) applies for life if the person is convicted of or

found not criminally responsible on account of mental disorder for more than one offence referred to in paragraphs (a), (c), (c.1), (d) or (e) of the definition of designated offence in section 490.011 of the *Criminal Code*.

[18] All of the charges before the Court–the ss. 151, 152, and 271 counts–fall within the definition of "designated offence" in paragraph (a) of section 490.011 of the *Criminal Code*. The *Keinapple* decision stands for the principle that precludes multiple convictions or multiple punishments for the same offence, even though the matter might be the basis for two separate charges and it is because of that, on the application of the Crown, that the Court has stayed the ss. 271 and 152 charges.

[19] However, as was made clear by the Nova Scotia Court of Appeal in *R. v. Cross,* 2006 NSCA 30, the SOIRA regime does not involve the imposition of a punishment or a sentence. The SOIRA regime is a minimumly onerous reporting regime that is intended to protect public safety, ensure that there is ongoing minimal surveillance of the place of address of a person who has been convicted of a designated offence, and a SOIRA order does not constitute a punishment or a sentence.

[20] On that basis, applying the clear wording set out in section 490.013(2.1) of the *Code*, given that E.C.M. was convicted of more than one designated offence, I find that the SOIRA order in this case must be one in accordance with 490.013(2.1), an order that applies for life.

[21] Although the period of imprisonment is significant, I do find that E.C.M. has the ability to pay a victim-surcharge amount and there will be a $200 victim-surcharge amount imposed in relation to this matter. E.C.M. will have four years to pay the victim surcharge amount.

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J.P.C.