NOVA SCOTIA COURT OF APPEAL
Citation: R. v. J.M.W., 2012 NSCA 9

Date: 20120125
Docket: CAC 339020
Registry: Halifax

Between:

J. M. W.

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on publication: Pursuant to s. 486.4 of the *Criminal Code*

Judges: MacDonald, C.J.N.S., Hamilton and Beveridge, JJ.A.

Appeal Heard: January 20, 2012, in Halifax, Nova Scotia

Held: Leave to appeal is denied, per reasons for judgment by the Court

Counsel: Appellant, in person
Mark Scott, for the respondent

Order restricting publication – sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(*a*) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 172, 172.1, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.02, 279.03, 346 or 347,

(ii) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983, or

(iii) an offence under subsection 146(1) (sexual intercourse with a female under 14) or (2) (sexual intercourse with a female between 14 and 16) or section 151 (seduction of a female between 16 and 18), 153 (sexual intercourse with step-daughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

(*b*) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in any of subparagraphs (*a*)(i) to (iii).

By the Court:

[1] The appellant seeks leave to appeal, and if leave is granted, appeals from a sentence of two years incarceration and ancillary DNA and SOIRA Orders. The appellant is self-represented on appeal but had counsel during the proceedings in Provincial Court where he pled guilty to breaching s.153(a) of the *Criminal Code* by virtue of having had repeated sexual intercourse with his very vulnerable, 14-year-old stepdaughter.

[2] The appellant feels his sentence is unfair. This feeling is caused by the appellant's perception that the trial judge did not give the appellant credit for time spent on remand, and his claim that he was unaware that the SOIRA Order would be made and its length.

[3] It is correct that the appellant did spend approximately four months on remand after his surety rendered. Crown, defence, and the trial judge were well aware of the time spent by the appellant on remand. The Crown sought a sentence of two years, on a go forward basis, the defence a sentence of two years less one day, also on a go forward basis, but requested it be served in the community on a

conditional sentence order. The trial judge reserved his decision to consider these submissions. On the return date, he concluded:

> Considering here the victim, the kind of offence and [J.M.W.s'] own background and considering the range of sentences in other cases, a period of incarceration in a federal jail for two years going forward from today will be appropriate. I have considered the fact that he has spent a considerable period of time on remand here since June 11th. I have taken that into account in considering the length of the sentence and I'm satisfied that a sentence of two years going forward from today is a sentence that properly reflects the severity and the seriousness of what has actually happened.

[4] We fail to see any error in principle by the learned trial judge, nor is the sentence in any way unfit. The record demonstrates that it was understood that a SOIRA Order was mandatory. The *Code* mandated it be made, and its length.

[5] Despite the appellant’s stated feelings of unfairness, his complaints of legal error by the trial judge have no substance. We would therefore deny leave to appeal.

MacDonald, C.J.N.S.

Hamilton, J.A.

Beveridge, J.A.