

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. S.C.C., 2008 NSSC 115

Date: 20080403

Docket: CR. Am. 285705

Registry: Amherst

Between:

Her Majesty the Queen

v.

C. (S. C.)

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

Judge: The Honourable Justice J. E. Scanlan

Heard: 03 April 2008, in Amherst, Nova Scotia

Written Decision: 16 April 2008

Counsel: Mr. Bruce Baxter, for the crown
Mr. Jim O'Neil, for the defence

Publishers of this case please take note that Section 486.4 of the *Criminal Code* applies and may require editing of this judgment or its heading before publication. The subsection provides:

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or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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;

By the Court:

[1] The crown has indicated, by way of recital of the facts, that there were a number of sexual assaults that occurred over a rather extended period of time. There were too many to count. S.C. was put in a position by the victim's parents whereby he became a care giver for this young boy. He took advantage of him and the situation that he found himself in, and in the end even became somewhat violent when the young man said no more, breaking dishes, trying to get in through a locked door, et cetera.

[2] There was a breach of trust. Children, when they're brought up, they're taught to obey those who have control over them or are parenting them, or people who are acting in the place of their parents. Who do those children run to for help and protection, when the very people who are entrusted to care for them are the ones that are abusing them? That's why, when a person in a position of trust is in fact the abuser, the court finds that as a very aggravating circumstance.

[3] The best thing and only thing you have going for you in this case, S.C., is that you entered a guilty plea which avoided the necessity of a trial. I do not adopt a grid, as suggested by Mr. Greenspan, or by Mr. Baxter, but I certainly give you some credit in terms of the penalty that I'm going to impose on you. Aside from that, the fact, like I said, that you were a person in a position of trust who committed these acts upon a helpless young boy is a very aggravating circumstance.

[4] In terms of consequences, well you're here today to deal with the consequences of your acts, but for the victim it scarred him, perhaps for life, to the point where he made many attempts to take his own life. That's what you did to him. He attempted suicide by slitting his wrists, tying a bag over his head, a noose around his neck, even dropping a radio in the bathtub with him, trying to kill himself. He spoke of the shame. He spoke of the depression. He spoke of the guilt, for something which he has no reason to feel guilty. He felt guilty not just in terms of the acts that he had to endure, but in terms of the fact that he didn't speak out sooner to help other children.

[5] It's a rather unique situation that when the crown presented to me as a precedent *R. v. C. (S.C.)*, and it's just in the last few minutes that counsel came to realize this was you, in a case where you weren't twenty some years old, but you

were forty-two years old, sexually assaulted your stepson. How do I weigh that in terms of this sentence? At the time that this offence was committed, you had no prior record. In fact, at the time Judge Tufts sentenced you, you had no prior convictions. Clearly this offence shows you had committed prior acts; this one specifically. You got a deal from Judge Tufts, because I suppose had you been convicted of this offence at the time he sentenced you, he would have given you a lot more time in prison.

[6] You now come to this court and say, “But look at all the treatment I’ve taken. Look at the special arrangements I’ve made working with children’s services, making sure they put in place and my wife puts in place things that are going to protect my child or step-child.” Your counsel even goes so far as to suggest that the offences you committed in relation to this victim were not violent offences. S.C., by their very nature, sexual offences such as these are violent. Think in terms of the consequences for this victim, where it left him feeling that perhaps his only way out, his only way to deal with the consequences was to take his own life. These are violent offences because they’re all about empowerment, an adult and a child. An adult who takes advantage of the position they find themselves in and the power they have, both physical power and powers of persuasion where you try to convince him that it’s normal, giving him trips, taking him on trips with you, treating him like an adult. Why? Sexual gratification at that child’s expense. Nothing more, nothing less.

[7] The pre-sentence report suggests that now that you have all this treatment, you’re a low to moderate risk of reoffending. When you consider the consequences for the victims, and who your victims are, even a low to moderate risk is high, in terms of consequences. When I consider not just you, but when I consider other people in the community who might think that they can take advantage of the situation they find themselves in and seek sexual gratification at the expense of an eleven or fourteen year old boy, it’s not just you I have to consider, it’s others. The message has to be loud and clear: you do this and you’re going to jail.

[8] Section 718 of the *Criminal Code* sets out a number of factors I have to consider when imposing a sentence or crafting a sentence. When your counsel talks about the programs that you’ve taken, and the prospects for your future, and the decreasing risk to children, any sentence that I impose here today doesn’t prevent you, when you are released from prison, from continuing with those

programs. If you don't have the message now, I'll indicate to you, you are going to prison, inside a jail.

[9] I consider all the factors as enumerated in section 718, the need for both general and specific deterrence. On the issue of whether a conditional sentence is appropriate, I consider the issue as to whether or not, number one, this is an offence that would suggest that a fit and proper sentence would be two years or less. I am not convinced that it is a fit and proper sentence. Secondly, even if it was, I am satisfied that it would be contrary to the administration of justice to impose such a sentence in the circumstances of this case. I said to your counsel during submissions that yes, because of the provisions of section 11 of the *Charter* you would be eligible for a sentence to be served in the community if you were eligible to a sentence of less than twenty-four months, but I would still have to be satisfied that it would not be contrary to the administration of justice. As I said, I am not satisfied. More importantly, however, I am not satisfied that a sentence of less than twenty-four months is appropriate either.

[10] As I said, the need for general and specific deterrence in your case is great. General deterrence, because of the nature of the victims and the age of the victims and the nature of the offences. These types of offences cry out for substantial periods of imprisonment. The sentences that are imposed by the courts are wide ranging. In crafting your sentence, however, I must take into account your circumstances, the circumstances of this case, and what I feel is appropriate.

[11] I am satisfied that a fit and proper sentence in this case is to have you imprisoned for a period of twenty-six months in a federal institution. There will be a 161 order which prohibits you from attending at parks or recreation areas where there are children, or being employed in situations where there are children. I am not going to read the specific sections of the *Code*, counsel. They will be in the order. Or to use a computer to contact children. That order will be in place for twenty years. I already referenced the fact that by its very nature these offences are violent offences. People who are prepared to commit these violent offences should not be possessing or owning firearms, ammunitions or explosives. I am prepared to make a firearms prohibition for twenty years as well. In addition, there will be a SOIRA order for twenty years, to be registered under the sex offender registration. That is the sentence which I impose, counsel.

J.