

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. D.J.B.*, 2009 NSSC 415

Date: 20091223

Docket: CRH 269165

Registry: Halifax

Between:

Her Majesty The Queen

v.

D.J.B.

Restriction on publication: Section 486.4 C.C.C. (Sexual Assault)

Judge: The Honourable Justice M. Heather Robertson

Heard: September 29 and 30 and October 1, 2009, in Halifax,
Nova Scotia

Oral Decision: December 23, 2009 (**SENTENCING**)

Written Release: February 17, 2010

Counsel: Kimberley McOnie, for the Crown
J. Patrick L. Atherton, for the defendant

Robertson, J.: (Orally)

[1] This is a sentence following the accused's conviction for sexual assault. The victims in this case were BJG, NR, AB and JC.

[2] BJG while 17 years of age at the time was the step-daughter of the accused and he therefore was in a position of trust with respect to her. NR was a friend of the family and was on a sleep-over at the time when that sexual assault occurred. AB was a niece of the accused and the sexual assault occurred at a party in a family home. JC was again a little girl staying over night with the accused's daughter and found the accused naked in bed beside her. These are reprehensible acts of sexual intrusion on vulnerable young girls – as young as the age of 11, whose lives will be irreparably changed by these events.

[3] I have reviewed the victim impact statements and I am touched by them and agree that there has been considerable emotional duress, fear of the future and anxiety caused by these assaults on BJG and AB who are the authors of these impact statements. I have no doubt that the other two little girls were similarly affected.

[4] I am aware of the relevant statutory provisions respecting sexual assault and sexual interference, the charges for which DJB has been found guilty. And, I have reflected on the principles of sentencing Section 718 of the *Criminal Code*, ss. 718.01, 718.1, and 718.2. Section 718.2 in particular reflects on the relevant aggravating or mitigating circumstances and these children were under the age of 18 and that it most certainly an aggravating circumstance and he was in a position of trust to his step-daughter.

[5] Nevertheless, the offender should be presented with the opportunity to straighten his life out, to make good the future years and have an opportunity for a complete rehabilitation. I have before me and have read the Dr. P. Scott Theriault's assessment of the accused and I have also reflected on the pre-sentence report that I received November 30, 2009. I was struck by the fact that the offender still does not acknowledge his wrong doing or acknowledge that these events occurred. He did however come a little bit closer to acknowledging responsibility when he told Dr. Theriault that if these events did occur "I was drunk I don't have any memory of them" and he simply cannot remember that the events happened.

[6] I do see these as opportunistic crimes not crimes of a sexual predator. It was unfortunate that he lost his spouse, he was drinking heavily and admits that, to some degree, booze is really at the root of this problem. So, I see it as an opportunistic crime that would probably not have occurred had DJB never been drinking on these occasions. Indeed, he should refrain from alcohol.

[7] I accept the submissions of the Crown that these are serious offences and warrant a federal time. I also am in agreement with Mr. Atherton that although reprehensible these actions are on the lower end of sexual interference scale and I want to ensure that DJB has some follow-up after a term of imprisonment.

[8] And, accordingly I believe it would be appropriate to sentence him to two years of federal time for the offences for which he has been found guilty after consideration of the ten months of incarceration spent on remand. I would further sentence him to a period of probation for two years following his incarceration. I would recommend that he would be required to take alcohol and drug testing during any period of probation at the requirement or demand of his probation officers and that he refrain from any use of alcohol. I would also the mandatory DNA and sex offender information registry and s. 109 provisions will prevail in the Court's order.

MR. ATHERTON: My Lady, just for the purposes of the record, um, uh, could you break down the two years per the offences convicted of?

THE COURT: Yes.

MR. ATHERTON: Thank you.

THE COURT: I am sentencing the accused consecutively to six months on each of the offences with which he has been found guilty and that amounts to

two years incarceration after credit for the months spent in custody at the rate of two for one – ten months – therefore. And I will be happy to sign those orders for you Ms. McOnie.

Justice M. Heather Robertson