

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Connolly, 2013 NSSC 215

Date: 20130627

Docket: CRAT 356053

Registry: Antigonish

Between:

Her Majesty the Queen

Plaintiff

v.

John Archibald Connolly

Defendant

Sentencing Decision

Judge: The Honourable Justice Gerald R. P. Moir

Heard: June 27, 2013

Written Decision

Released: July 5, 2013

Counsel: Allen Gordon Murray, for the Provincial Crown
Wayne J. MacMillan, for the defendant

Moir J. (Orally):

[1] Mr. John Archibald Connolly is an eighty-four-year-old man who suffers from numerous physical problems. He had an aneurysm and underwent open heart surgery about seven years ago. Shortly afterwards, he was operated on to arrest bowel cancer and had a permanent colostomy. He has a pacemaker and suffers from small strokes. He is on medication for heart disease, stroke, prostate problems, cardiovascular problems, and depression caused by this case.

[2] Over their adult lifetimes, Mr. Connolly and his wife, Ms. Bessie Connolly, took many foster children into their home and provided the children with what, to all appearances, was an excellent place to live. However, four of the children were molested by Mr. Connolly.

[3] The first girl to suffer under Mr. Connolly was in the Connolly home from 1956 until 1965. Hers was the most serious abuse, consisting of repeated intercourse with a young girl until she was old enough to better fend for herself. The next two were in the home from the late sixties until the mid-seventies. And, the third was there from the time she was a toddler until 1980. These three girls

suffered from degrading sexual assaults. My reasons after trial show that I concluded that as the household grew and became more crowded Mr. Connolly desisted from the extreme assaults the first girl underwent because of the risk of detection.

[4] There are those who question Mr. Connolly's conviction. I refer them to the highly credible testimony of the four women who suffered as girls, to Mr. Connolly's own statement to the police and other statements he made, and to my lengthy reasons analysing the trial evidence.

[5] One of Mr. Connolly's defenders, Father Gerald David, writes "we live in a very complicated world, one which seems to care less about people." He follows that theme with his observation that the Connollys provided a home for vulnerable children and his perception that the risk of accusations deters others from doing so today.

[6] With respect, there is nothing complicated about the Connolly case. Questions raised about the abuse having gone undetected, the girls returning to

what had always been their home, and financial motives were all fully answered during the three-day trial, which is a matter of public record.

[7] The basic facts of this case are uncomplicated. For years, and repeatedly, Mr. Connolly sexually abused four of the foster children he took into his home. This is clear from the highly credible testimony of the four women, statements made by Mr. Connolly, and the evidence as a whole.

[8] So, that is the fact we have to deal with in sentencing: it was proved. It was proved beyond reasonable doubt. I repeat: For years, and repeatedly, Mr. Connolly sexually abused four of the foster children he took into his home.

[9] Nor are we permitted to be uncaring about people when we sentence them for what they have done wrong. We have to consider Mr. Connolly's circumstances including the many good things about him. We have to consider the pathos of his family's present situation. But, we also have to be careful for those he wronged. We have to care about those who may be victimized in future if we live in a society in which sexual abuse of children is tolerated. And,

specifically, we have to be careful for future foster children who may live under foster parents who will abuse if not deterred by law.

[10] For his client, Mr. MacMillan proposes a term of eighteen months on account of the assaults against the first foster child and eight months concurrent on the others. He proposes service of the sentence in the community, i.e. a conditional sentence with a house arrest feature.

[11] The Crown proposes four to six years in penitentiary.

[12] I bear in mind the principles of sentencing set out in the *Criminal Code*. Most prominent are the need for similar sentences for similar offences committed in similar circumstances, the need to avoid imprisonment if other available sanctions are reasonable in the circumstances, the need to denounce and deter offences against children and violent offences of all kinds, and the aggravating nature of an offence against a person under one's authority or in respect of whom one has been put in a position of trust.

[13] It is also clear that, just as a youthful offender may be entitled to greater leniency, so may be an elderly person, especially one with medical problems. Youth lack mature judgment and a year in jail is longer for them than for a thirty-year-old. The infirm suffer in jail more than others. And a year is a greater proportion of one's remaining life the older one gets.

[14] I have studied the authorities referred to me by the Crown and the defence, and I sincerely thank counsel for thorough presentations. I accept the Crown submission that the range for similar offences is usually five to ten years imprisonment and the defence submissions that there is no such thing as a uniform sentence and, for these kinds of offences, a sentence under two years served in the community is available in some circumstances as an exception.

[15] I have to weigh the considerations in favour of a short sentence against those favouring a longer one.

[16] Mr. Connolly did have a good reputation in his small community. The Connollys made a contribution, a significant one, for many of the children who

they parented. Mr. Connolly has lost the pride which comes from knowing that and he has lost his standing. Mrs. Connolly has been as seriously affected.

[17] At eighty-four, Mr. Connolly sets a record in the case law to which I have been referred. His age and health make specific deterrence unnecessary.

[18] However, I have to consider what he did in the context of the general society. Foster children have much to overcome, without being molested. To deliberately harm a vulnerable foster child violates the trust obligation a foster parent owes to the child and to society, who places these children in the foster parent's control.

[19] Three of the women chose to provide victim impact statements. They are strong adults who, after years of living with a secret, may now be free to live without the consequences. But, there are many others not strong enough to endure and overcome what they have suffered. I have no choice but to keep them in mind when sentencing Mr. Connolly. That is to say, I have no choice but to keep in mind the next foster parent who is tempted to abuse their foster child. Such a foster parent has to know that, sooner or later, they will be called to account. That,

if they choose as Mr. Connolly did, there is no limit on when they will be exposed to severe punishment. Each of the repeated abuses over the years was an egregious breach of trust owed to children, the foster system, and society. The magnitude of those breaches precludes a sentence to provincial time, notwithstanding the many other points in favour of it. Without a sentence in the provincial level, a conditional sentence is not possible.

[20] I sentence Mr. Connolly on all counts to serve a period of three years imprisonment. It would be much longer if it had not been for his health, his age, and his loss of standing in a small rural community.

[21] I will sign a DNA order and a Registry order to be drafted by the Crown.

J.