SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Pentecost*, 2020 NSSC 277

Date: 20200818
Docket: Sydney No. 475383
Registry: Sydney

Between:

Her Majesty the Queen

v.

Jason Daniel Pentecost

Restriction on Publication: s. 486.4 of the *Criminal Code of Canada*

SENTENCING DECISION

Judge:	The Honourable Justice John P. Bodurtha
Heard:	March 3, 2020, in Sydney, Nova Scotia
Oral Decision:	August 18, 2020
Written Decision:	October 27, 2020
Counsel:	Sylvia Domaradzki, Crown Counsel Tony Mozvik, Q.C., Defence Counsel

By the Court (orally):

Introduction

[1] After a trial, I found Jason Pentecost ("Pentecost") guilty of a single count of luring against VB, contrary to s. 172.1 of the *Criminal Code*. Section 172.1 addresses the offence of luring a child and reads as follows:

> 172.1 (1) Every person commits an offence who, by a means of telecommunication, communicates with
>
> > (a) a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of an offence with respect to that person under subsection 153(1), section 155, 163.1, 170, 171 or 279.011 or subsection 279.02(2), 279.03(2), 286.1(2), 286.2(2) or 286.3(2);

[2] This case involved an adult offender, Pentecost, using telecommunication (i.e., phone or computer) to Snapchat with VB, a person under the age of 18, to facilitate the sexual exploitation charge.

[3] Section 172.1 is contained within a group of sections under the *Criminal Code* that were amended in 2012 to reflect Parliament's intention to increase sentences for sexual offences against children. When proceeding summarily, the minimum sentence is six months and the maximum is two years less a day for the offence. The one-year mandatory minimum sentence when proceeding by indictment was deemed unconstitutional in *R. v. Hood*, 2018 NSCA 18, and the maximum is 14 years. The punishment for crimes of this nature is significant and reflects the need for our society to protect children and recognize their vulnerability.

[4] For close to a year, Pentecost used Snapchat, a social media application, to engage in grooming behaviour with VB.

[5] After reviewing the Pre-Sentence Report ("PSR") prepared by Allister Matheson on February 25, 2020, the respective Crown and Defence briefs, and hearing the oral submissions of counsel. I now must determine what is a fit and proper sentence for Pentecost.

Facts/Circumstances of the Offence

[6] The facts are set out in the trial decision and can be summarized in the following paragraphs.

[7] Pentecost initiated contact with VB in March, 2016 on Snapchat. There were times when Pentecost would ask her for pictures. There were a couple of times that things were exchanged. Penis pictures were sent from Pentecost's phone to VB. She exchanged pictures as well, but each time it was initiated by Pentecost. She sent a couple buttocks photos where she would be wearing either a thong or shorts. She sent two photos of her chest. In one photo, she was wearing a bra and the other photo was of her bare chest.

[8] Pentecost misled VB about his identity and his age. VB told him she was 16 when they first started chatting on Snapchat and that her birthday was in July.

[9] There were times when they would be Snapchatting and Pentecost would say he was "in a mood". VB indicated this meant he was "horny". He would start flirting and ask VB to send him stuff. They would engage in sexual banter.

[10] Overall, the conversations ranged from friendly talk, to flirting, to sexually explicit conversations such as: "Big enough to choke u and 2 of your friends."

[11] VB talked to him about her parents' divorce.

[12] At trial, I found Pentecost guilty, under s. 172.1 of the *Code*, of engaging in a grooming type of behaviour with VB. The Snapchats with VB were the type of grooming behaviours that make it easier for another offence to be committed.

Circumstances of the Offender (PSR)

[13] The probation officer, Allister Matheson, prepared a presentence report dated February 25, 2020 which provides the following information regarding Pentecost.

[14] Pentecost was born in July 1976. In describing his family, he reported to the probation officer that he does not have a close relationship with his mother. His biological father was not in his life and he does not know his identity. He describes having a close relationship with his siblings. They relied on each other growing up. He has three half-sisters and two half-brothers. He reports having left the family home at the age of 15 and moving in with his girlfriend's family. He later married that girlfriend, Ann Pentecost (nee Grenier), in 2005.

[15] They have two children together, currently aged 12 and 11. He states life was "great prior to the offence". Although he is still together with his spouse, the marriage is not the same.

[16] Ann Pentecost was contacted for the report and she advised that she has known Pentecost since 1992. She describes him as an excellent father, who is very involved in his children's lives, and they do many family activities together. She advises that he has no substance abuse issues nor is he a quick-tempered or violent person.

[17] Pentecost graduated with a Bachelor of Education Degree in 2005 from the University of Maine. He was employed as a teacher with the Cape Breton Victoria Regional School Board between 2005 and 2017, teaching at the junior high and high school levels. He has been on unpaid suspension from his employment as a teacher since 2017. He is unsure of any future employment. He has had no income since June 2018 and the family is living off of his spouse's income.

[18] Pentecost reports no current involvement with mental health professionals but has seen therapists in the past. He reports no substance abuse issues. Pentecost describes himself as a quiet, caring and carefree person. He says he is a private person who does not like to be the centre of attention. The Court case has been "a living hell every day for him" because of the attention he has been receiving.

[19] Pentecost stated that he accepts the Court's decision, acknowledging the Court followed the "letter of the law" but does not accept responsibility for committing the offence.

[20] He has no prior criminal record.

[21] A sex offender assessment was discussed and Pentecost is agreeable to participating in same; however, due to the volume of cases, this could take two to three years to complete from the date of referral.

[22] I found the PSR generally quite positive and in over the three years that Pentecost has been on release conditions, he has not breached any of the conditions.

[23] At the sentencing hearing, Pentecost declined to exercise his allocution right under s. 726 of the *Criminal Code*, however this has no impact on my decision.

Position of the Parties

[24] The Crown says the appropriate sentence in this case is a custodial sentence in the range of 90 days to six months.

[25] The Crown is also seeking several ancillary orders:

- DNA (primary) pursuant to s. 487.04 of the *Criminal Code*;
- SOIRA Order (20 years)
- Weapons prohibition (10 years) pursuant to s. 109 of the *Criminal Code*; and
- Prohibition Order (10 years) pursuant to s. 161 with an exception made for Pentecost's children.

A Probation Order is also sought by the Crown as follows:

- Two years with one of the conditions being no contact with VB.

[26] The Defence argues that the appropriate sentence is a suspended sentence or, alternatively, a brief conditional sentence. The Defence does not oppose the mandatory ancillary orders put forward by the Crown and leaves the s. 161 Prohibition Order to the Court's discretion.

Principles of Sentencing

[27] In imposing an appropriate sentence, I must apply the purpose and principles of sentencing set out in ss. 718, 718.1, 718.2 of the *Criminal Code*. These provisions provide me with the general principles and factors I should consider in reaching a just sentence. The purpose of sentencing is to protect society and to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the objectives outlined in s. 718 of the *Criminal Code*.

[28] Section 718 of the *Criminal Code* reads as follows:

> **Purpose and Principles of Sentencing**
>
> Purpose
>
> 718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

> (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
>
> (b) to deter the offender and other persons from committing offences;
>
> (c) to separate offenders from society, where necessary;
>
> (d) to assist in rehabilitating offenders;
>
> (e) to provide reparations for harm done to victims or to the community; and
>
> (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[29] Section 718.1 of the *Criminal Code* says that the fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[30] Section 718.2 requires that I consider specific sentencing principles, including the mitigating or aggravating factors relating to the offence or the offender. Section 718.2 reads:

> **Other sentencing principles**
>
> 718.2 A court that imposes a sentence shall also take into consideration the following principles:
>
> > (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
> >
> > > (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
> > >
> > > (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
> > >
> > > (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
> > >
> > > (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
> > >
> > > (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
> > >
> > > (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,

> (v) evidence that the offence was a terrorism offence, or
>
> (vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act*.
>
> shall be deemed to be aggravating circumstances;
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[31] Any sentencing hearing requires a careful consideration of the unique circumstances of the offender and the offence, and a balancing of sentencing objectives (see: *R. v. Lacasse*, 2015 SCC 64, at para. 1).

Analysis - Aggravating and Mitigating Factors

Aggravating

- Age of the victim, and the fact that she was under 18, which is statutorily aggravating;
- Position of trust, being a teacher;
- Grooming behaviour;
- Length of the ongoing behavior;
- Aside from chats and grooming behaviour, sexually explicit photographs were sent and received; and
- False identity provided to the victim.

Mitigating Factors

- No criminal record

[32] Pentecost did not accept responsibility for the offence. A lack of remorse post-verdict and having the victim testify at a trial are not aggravating factors, but do remove the prospect of mitigation had there been remorse, responsibility and a guilty plea.

[33] Section 718.2(a)(iii) of the *Criminal Code* deems it aggravating for an offender to abuse a position of trust. Pentecost was a teacher, but did not teach VB; therefore, this was not a situation where he used his authority as a teacher to influence her behaviour. However, in *R. v. Woodward*, 2011 ONCA 610, the Court explained how the use of the word "trust" can refer to the grooming techniques used on children by adult offenders in a position of trust. Pentecost used these grooming techniques to gain VB's trust. The Court at paras. 41-43 said:

> 41 I would reject this submission. In using the term 'trust' to describe the relationship in this case, I do not agree that trial judge had in mind the traditional trust relationship as described in *D. (D.)* The trial judge fully understood that the relationship between the appellant and the complainant was not the classic 'position of trust' situation. In her reasons, after quoting a passage from *D. (D.)* in which the court referred to the abuse of children by "adult offenders in a position of trust", the trial judge stated:
>
> > In reviewing that paragraph, I am mindful of the fact that this is not a traditional relationship of trust as is found in so many cases. At the same time, [the complainant] did come to trust Mr. Woodward in light of the frequency of their cyber contact.
>
> 42 Rather, in using the word 'trust', the trial judge was referring to the grooming techniques the appellant used to gain the complainant's trust. This is the type of 'trust' that Fish J., writing for the court, discussed in *R. v. Legare* (2009), 249 C.C.C. (3d) 129 (S.C.C.), at paras. 29 and 30:
>
> > But those who use their computers to lure children for sexual purposes often groom them online by first gaining their trust through conversations about their home life, their personal interests or other innocuous topics. As Hill J. explained in R. v. Pengelley, [2009] O.J. No. 1682 (S.C.J.), at para. 96:
> >
> > > ... *computer communications may serve* to sexualize or groom or trick a child toward being receptive to a sexual encounter, *to cultivate a relationship of trust*, or to undertake a process of

> relinquishing inhibitions, all with a view to advancing a plan or desire to physical sexual exploitation of a young person.
>
> [Emphasis added]

> 43 Treating the appellant's efforts at gaining the complainant's trust through grooming as an aggravating feature finds support in this court's decision in *R. v. F. (G.C.)* (2004), 188 C.C.C. (3d) 68 (Ont. C.A.), which treated grooming as an aggravating feature in a sexual assault case. In my view, grooming also properly constitutes an aggravating feature in the offence of luring and the trial judge did not err in treating it as such.
>
> *R. v. Woodward*, 2011 ONCA 610

[34] Section 718.01 deals with offences involving children and states that, when an offence involves the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence.

[35] Section 718.2(a) states that a Court shall consider both the abuse of a person under the age of 18 years old and the abuse of a position of trust in relation to the victim as aggravating factors when imposing a sentence.

Proportionality Principle

[36] Section 718.1 reads: "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender." The sentence must not be more severe than what is just and appropriate given the seriousness of the offence and the moral blameworthiness of Pentecost. The Supreme Court of Canada in *R. v. Lacasse*, *supra*, described it as:

> [12] … In other words, the severity of a sentence depends not only on the seriousness of the crime's consequences, but also on the moral blameworthiness of the offender. Determining a proportionate sentence is a delicate task. As I mentioned above, sentences that are too lenient and sentences that are too harsh can undermine public confidence in the administration of justice.

[37] The Supreme Court of Canada further explained the principles of proportionality and parity at paras. 53 and 54:

> 53 This inquiry must be focused on the fundamental principle of proportionality stated in s. 718.1 of the *Criminal Code*, which provides that a sentence must be "proportionate to the gravity of the offence and the degree of responsibility of the offender". A sentence will therefore be demonstrably unfit if

> it constitutes an unreasonable departure from this principle. Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances. Individualization and parity of sentences must be reconciled for a sentence to be proportionate: s. 718.2(a) and (b) of the *Criminal Code*.
>
> 54 The determination of whether a sentence is fit also requires that the sentencing objectives set out in s. 718 of the *Criminal Code* and the other sentencing principles set out in s. 718.2 be taken into account. Once again, however, it is up to the trial judge to properly weigh these various principles and objectives, whose relative importance will necessarily vary with the nature of the crime and the circumstances in which it was committed. The principle of parity of sentences, on which the Court of Appeal relied, is secondary to the fundamental principle of proportionality. This Court explained this as follows in *M. (C.A.)*:
>
> > It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime ... Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. [para. 92]

[38] Assessing the gravity of the offence requires me to consider both the gravity of these offences in general and the gravity of Pentecost's specific offending behaviour.

Denunciation and Deterrence

[39] The role of denunciation was explained by the Supreme Court of Canada in *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500 at paragraph 81:

> The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law… Our criminal law is also a system of values. A sentence which expresses denunciation is simply the means by which these values are communicated.

[40] Nova Scotia courts have routinely emphasized that deterrence and denunciation are the primary sentencing principles for offences involving children. General deterrence is necessary to send a message to the community that this behaviour will not be condoned.

[41] The seriousness of the offence of internet luring and the potential harm it can cause children was discussed in *R. v. Nightingale*, 2013 CarswellNfld 30, at paras. 1-3.

Internet Luring

Introduction:

1 The Internet provides access to information in a manner and to a degree which would have been unfathomable to our ancestors. However, the Internet also has a darker side. It provides easy and concealed access to children, by those who would lure and sexually abuse them, in a manner which would have been unfathomable and horrifying to our ancestors. As pointed out by the Ontario Court of Appeal in *R. v. Alicandro*, 2009 ONCA 133 (Ont. C.A.), the Internet "is a medium in which adults can engage in anonymous, low visibility and repeated contact with potentially vulnerable children. The Internet can be a fertile breeding ground for the grooming and preparation associated with the sexual exploitation of children by adults." The Internet provides modern day child sexual predators with an international reach which is extremely difficult to monitor and police (see *R. v. Johnson* (2009), 457 A.R. 103 (Alta. C.A.)). The challenge for the judiciary involves adapting its thinking to such a relatively new reality (see the comments of Deschamps J. in *R. v. Morelli*, [2010] 1 S.C.R. 253 (S.C.C.), at paragraph 114).

2 Parliament and legislative bodies throughout the world have attempted to produce laws to combat this world-wide phenomenon. The offence of luring created by section 172.1 of the *Criminal Code* is an example of one of those laws. In *R. v. Legare*, [2009] 3 S.C.R. 551 (S.C.C.), the Supreme Court of Canada noted that Parliament enacted section 172.1 of the *Criminal Code* in order "to shut the door on predatory adults who, generally for a sexual purpose, troll the Internet for vulnerable children and adolescents. Shielded by the anonymity of an assumed online name and profile, they aspire to gain the trust of their targeted victims through computer 'chats' — and then to tempt or entice them into sexual activity, over the Internet or, still worse, in person." The Supreme Court of Canada has pointed out that "recognition" of "the inherent vulnerability of children has consistent and deep roots in Canadian law" (see *A.B. (Litigation Guardian of) v. Bragg Communications Inc.*, 2012 SCC 46 (S.C.C.), at paragraph 17). In *R. v. I. (D.)*, 2012 SCC 5 (S.C.C.), the Supreme Court of Canada resorted to extremely strong judicial language, characterizing the sexual abuse of children as "evil."

3 The sentences imposed for this offence must keep pace with and recognize the reality and scope of the present environment in which child sexual predators operate and the danger they now pose to children all over the world through the use of electronic means. As pointed out in *R. v. Pritchard* (2005), 371 A.R. 27 (Alta. C.A.), at paragraph 8, the use of "the Internet to lure a child into sexual

> activity is, unfortunately, an emerging concern in today's society. The Courts must do what they can to try to protect child victims from this predatory conduct. Focussing only on the offender and his or her needs without regard to the circumstances of the offence and the victim does nothing to accomplish this." As was emphasized in *R. v. Sharpe*, [2001] 1 S.C.R. 45 (S.C.C.), at paragraph 175, the "protection of children from harm is a universally accepted goal."

Sexual Offences Against Children

[42] In *R. v. M.(D.A.)*, (1999), N.S.J. No. 468, at paras. 64-67, Cacchione, J. stated:

> In cases involving sexual abuse of children, certain principles have emerged from cases such as: *R. v. Hawkes* (1987), 81 N.S.R. (2d) 156 (C.A.): *R. v. Henderson*, 109 N.S.R. (2d) 349 (C.A.); *R. v. W.M.D.* (1992), 110 N.S.R. (2d) 329 (C.A.); *R. v. E.J.W.* (1993), 120 N.S.R. (2d) 66 (S.C.); *R. v. Fillis* (1986), 94 N.S.R. (2d) 356; *R. v. Richard* (1991), 106 N.S.R. (2d) 236; and *R. v. Cunningham* (1991), 108 N.S.R. (2d) 265.
>
> These cases stand for the following propositions:
>
> > That deterrence both specific and general is the primary sentencing consideration with emphasis on general deterrence when the offence involves children.
>
> This is not to say that reformation and rehabilitation is not relevant to these types of cases.
>
> Prior to the conditional sentencing provisions becoming law, the courts viewed as rare the cases involving a non-custodial sentence or a minimal sentence when children were sexually abused. These cases and others described as sexual abuse of children by an adult as a reprehensible crime calling for a sentence of denunciation.

He continued at paras. 83-85:

> The sexual assault of a child or children by an adult is a reprehensible crime. It is made even more reprehensible when the adult is in a position of trust vis-a-vis the child. The Court of Appeal in this Province has emphasized that sentences for sexual assaults on children cry out for denunciation. In *R v. Hawkes* (1987), 81 N.S.R. (2d) 156, the court stated at page 157:
>
> > ... Sexual abuse of near helpless children by adults, upon whom they should be able to rely for protection, should incur sentences which hopefully deter the perpetrator and others so inclined and demonstrate society's revulsion of such conduct. Children must be protected;

> deterrence must be both specific and general, with emphasis on the general aspect of deterrence.
>
> …
>
> The sentence for this type of offence is one that must reflect society's outrage at the sexual assaults committed on helpless children. I am entitled to presume, according to the authorities, that a sexual assault of a child on the verge sexual maturation will have a particularly lasting impact. *R. v. Henderson* (1992), 109 N.S.R. (2d) 349; *R. v. MacGrath* (1991), 128 N.R. 299.

[43] The Nova Scotia Court of Appeal in *R. v. W.(E.M.)*, 2011 NSCA 87, quoted sentencing Judge Jamie Campbell, J.P.C. (as he then was) at para. 13 of their decision:

> Society reserves its strongest sense of revulsion for those who cross the legal and moral boundary into treating children as objects of sexual gratification. The treatment of a child in this way is an attempt to deny her basic human dignity. In the eyes of the adult, the child is reduced to being a nameless thing. She is robbed of her childhood and of her innocence. She has no choice in the matter. She is simply used. She has become a means to an end.

Rehabilitation

[44] Even in cases that require denunciation and deterrence to be emphasized, rehabilitation continues to be a relevant objective. I must take this into consideration because rehabilitation of offenders continues to be one of the main objectives of Canadian criminal law (see *R. v. Lacasse*, *supra*, at para. 4). Sentencing is not an exact science, and it is incumbent upon the Court to view the circumstances of each offender and the circumstances of the offence.

[45] In *R. v. Allen*, 2012 BCCA 377, the British Columbia Court of Appeal determined it to be an error in law to consider other principles on an equal footing with denunciation and deterrence when the complainant of the offence was under eighteen:

> [52] In my view the reasons for sentence reveal that the sentencing judge considered denunciation and deterrence as sentencing objectives, but did not give primary importance to those principles. As I read the reasons for sentence the sentencing judge first considered denunciation, but went on to consider rehabilitation as an equally important objective. Thus, the sentence imposed was based on an incorrect premise.

Later in the decision, Ryan, JA confirmed:

> [60] Parliament has made it very clear that the protection of children is a basic value of Canadian society which the courts must defend. It has done this by creating a minimum sentence of imprisonment for the distribution of child pornography (s. 163.1(3)(a)) and by requiring that offences that involve the abuse of persons under 18 years of age be both an aggravating factor at sentencing and the subject of a sentence which primarily addresses denunciation and deterrence (ss. 718.2 and 718.01). Thus the sentence imposed on Mr. Allen ought to have communicated society's condemnation of his conduct. In ought to have been one which represented a symbolic, collective statement that the offender's conduct "should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law".

[46] The following comments concerning the sexual abuse of children by adults by Justice Moldaver (as he then was) in *R. v. D. (D.)*, [2002] O.J. No 1061 (C.A.), at paras 34-36, provide further guidance when considering the sentencing principles of denunciation and deterrence:

> … Adult sexual predators who would put the lives of innocent children at risk to satisfy their deviant sexual needs must know that they will pay a heavy price. In cases such as this, absent exceptional circumstances, the objectives of sentencing proclaimed by Parliament in s. 718(a), (b) and (c) of the Criminal Code, commonly referred to as denunciation, general and specific deterrence, and the need to separate offenders from society, must take precedence over the other recognized objectives of sentencing.
>
> We as a society owe it to our children to protect them from the harm caused by offenders like the appellant. Our children are at once our most valued and our most vulnerable assets. Throughout their formative years, they are manifestly incapable of defending themselves against predators like the appellant and as such, they make easy prey. People like the appellant know this only too well and they exploit it to achieve their selfish ends, heedless of the dire consequences that can and often do follow.
>
> In this respect, while there may have been a time, years ago, when offenders like the appellant could take refuge in the fact that little was known about the nature or extent of the damage caused by sexual abuse, that time has long since passed. Today, that excuse no longer holds sway. The horrific consequences of child sexual abuse are only too well known.

[47] Similarly, Moldaver, JA (as he then was), writing for the Court in *R. v. Woodward*, 2011 ONCA 610, stated:

> [76] … I wish to emphasize that when trial judges are sentencing adult sexual predators who have exploited innocent children, the focus of the sentencing hearing should be on the harm caused to the child by the offender's conduct and the life-altering consequences that can and often do flow from it. While the effects of a conviction on the offender and the offender's prospects for rehabilitation will always warrant consideration, the objectives of denunciation, deterrence and the need to separate sexual predators from society for society's well-being and the well-being of our children must take precedence.

Effect of Sexual Abuse on Child Victims

[48] Psychological and emotional damage caused by sexual abuse is a well-known and accepted consequence of the physical abuse associated with it. Psychological trauma often lasts much longer than the physical injuries associated with the abuse. Courts have been unanimous in their treatment of enduring psychological harm as an aggravating factor in sentencing.

[49] The emotional trauma can be presumed in cases of sexual abuse of children (*R. v. Henderson*, Feb. 11, 1992, SCC No. 02545 (NSSCAD)).

Impact on the Victim

[50] At the sentencing hearing, no Victim Impact Statement was provided from VB. This Court has previously held that the likelihood of psychological harm resulting from sexual offences against children may be inferred (see *R. v. H.(C.R.)*, 2012 NSSC 233, at para. 6, Bateman, JA in *R. v. M. (R.T.)* (1996), 151 N.S.R. (2d) 235 (N.S. C.A.); MacDonald, JA at para. 12 for the Court in *R. v. S. (W.B.)* (1992), 73 C.C.C. (3d) 530 (Alta. C.A.).

[51] In *R v. Woodward, supra***,** at paragraph 72, the Court noted, in part, the following well-recognized considerations from sexual abuse:

> (4) Adult sexual predators recognize that children are particularly vulnerable and they exploit this weakness to achieve their selfish ends, heedless of the dire consequences that can and often do follow.
>
> (5) Three such considerations are now well-recognized: (i) children often suffer immediate physical and psychological harm; (ii) children who have been sexually abused may never be able, as an adult, to form a loving, caring relationship with another adult; (iii) and children who have been sexually abused are prone to become abusers themselves when they reach adulthood.

[52] I infer that it is likely that VB has suffered psychological harm from Pentecost's luring activities.

[53] VB's mother provided a statement detailing her observations of the impact the offence has had on her daughter. The statement spoke of how VB blames and second guesses herself over the offence, which has led to severe panic attacks, depression and an unwillingness to leave her bedroom. She has lost her spirit and her ability to trust anyone. VB feels pain and shame and has isolated herself from her peers. The majority of her statement was hearsay, which is admissible at a sentencing proceeding; however, should it be in the interests of justice, the Court may compel a person to testify where certain conditions are met (s. 723(5)). I concluded it was not in the interests of justice to compel VB.

[54] The Court can infer from the caselaw and the statement from VB's mother that the offence has had a significant impact on VB and Pentecost's actions have caused psychological harm.

Range of Sentence

[55] Section 718.2 requires me to consider the principle of parity. This means, within reason, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. This requires an examination of the range of sentences imposed for the offence, taking into consideration that each sentence must reflect the unique circumstances of the offence and the offender.

[56] The Crown relies on the language from *R. v. Hood*, 2016 NSPC 78, at para. 75 (upheld by the Court of Appeal in 2018 NSCA 18 at para. 138), that sentences in the range of three-to-nine months would be lawful for each count.

[57] In *R. v. Barnes*, 2020 CarswellNfld 34, the Court, in discussing the range of sentence for a section 172.1 offence, said at paragraph 7:

> 7 In *R. v. M.C.* Judge Gorman reviewed a number of sentencing precedents from paragraph 60 to 71 of his decision and concluded that the range of sentence imposed for a section 172.1 offence was approximately 12 to 18 months. He went on to impose a sentence of 9 months imprisonment based on the positon taken by the Crown he did so indicating in his view 12 months would be more consistent with precedent. Counsel for the Crown in this case prepared a chart, which shows a range of 3 months (prior to mandatory minimum) to 36 Months. He has not drawn a distinction between sentences imposed for summary and indictable

> offences. He has maintained that the appropriate sentence is 12 months irrespective of the Crown election.

[58] In *R. v. Nightingale*, *supra*, Judge Gorman reviewed sentencing precedents dealing with luring of a child through the use of a computer system at paras. 54-58 and concluded at paras. 59 and 60 as follows:

> 59 The precedents referred to in relation to section 172.1 of the *Criminal Code* illustrate that significant periods of incarceration have been imposed for this offence. The range extends from twelve months imprisonment (*Daniels* and *Lithgow*), to fourteen months imprisonment (*Porter*), to eighteen months imprisonment (*Woodward* and *Rice*), to twenty months imprisonment (*Nichol*).
>
> 60 These precedents illustrate that a prescriptive range of sentence has not been established, but that significant periods of incarceration have been consistently imposed for breaches of section 172.1 of the *Criminal Code.*

[59] Judge Sakalauskas in *R. v. Ward,* 2019 NSPC 72, considered a mandatory minimum challenge during a summary conviction hearing. She provided some useful comments that are applicable to the case before me, at paras. 58, 62 and 63:

> 58 The defence characterizes Mr. Ward's actions as at the low end for this offence and called it "the least egregious situation you can think of". Mr. Ward is solely responsible his actions. He targeted a teenager who was a stranger to him and was the instigator of all communication. Sexually explicit communication. Communication encouraging her to meet with him, communication that requested and received pictures of the victim (although not explicit). This is not the least egregious situation for this offence. It is also not the most egregious, with a multitude of cases revealing much more aggravating situations. That being said, I cannot find a suspended sentence within the range. This offence requires a period of incarceration, as evident from the many decisions before me.
>
> …
>
> 62 Mr. Ward is a good prospect for rehabilitation, as shown by his work with Dr. Kelln and his pro-social life since his arrest. This offence needs deterrence and denunciation. Jail time is appropriate. This is in keeping with the jurisprudence and society's goals in prosecuting this offence in a rapidly expanding online world. I find that an appropriate range of sentence for this offence (and unlike the more aggravating ones) is between 1 to 4 months institutional incarceration along with a period of probation. Absent a mandatory minimum, I would sentence Mr. Ward to 3 months in jail, to be served intermittently, which would allow him to continue working and continue his rehabilitation, while also achieving deterrence and denunciation.
>
> 63 Absent a mandatory minimum, a Conditional Sentence would be available, but I would not grant one in Mr. Ward's circumstances. While I do not

> find he is a danger to society and accept Dr. Kelln's position on that, a Conditional Sentence Order would be contrary to the purpose and principles of sentencing.

Conditional Sentence

[60] If I determine that the appropriate range of sentence is a term of imprisonment of less than two years, I should consider whether a Conditional Sentence Order should be imposed:

> **742.1 Imposing of conditional sentence**
>
> If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under section 742.3, if
>
> > (a) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2;
> >
> > …
>
> *Criminal Code*, R.S.C. 1985, c. C-46

[61] Both Crown and Defence agree that Pentecost is not a danger to the community. They disagree on whether a conditional sentence would be consistent with the fundamental purpose and principles of sentencing.

[62] In *R. v. Proulx*, 2000 SCC 5, at paras. 114 and 127, the Supreme Court of Canada cautions that just because a sentence is available does not mean that it is fit and proper for the circumstances:

> 114 Where punitive objectives such as denunciation and deterrence are particularly pressing, such as cases in which there are aggravating circumstances, incarceration will generally be the preferable sanction. This may be so notwithstanding the fact that restorative goals might be achieved by a conditional sentence. Conversely, a conditional sentence may provide sufficient denunciation and deterrence, even in cases in which restorative objectives are of diminished importance, depending on the nature of the conditions imposed, the duration of

> the conditional sentence, and the circumstances of the offender and the community in which the conditional sentence is to be served.

And at para. 127:

> …
>
> 8. A conditional sentence can provide significant denunciation and deterrence. As a general matter, the more serious the offence, the longer and more onerous the conditional sentence should be. **There may be some circumstances, however, where the need for denunciation or deterrence is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct or to deter similar conduct in the future.**
>
> [Emphasis added]

[63] This is one of those situations where a Conditional Sentence Order is not appropriate. It would be contrary to the purpose and principles of sentencing. It would not send the message of society's revulsion of such conduct. In this case, there was a breach of trust and an exploitation of a person under the age of 18. A conditional sentence in these circumstances is not consistent with the fundamental purpose and principles of sentencing in s. 718 to s. 718.2 of the *Criminal Code*. I will not be granting a conditional sentence to the accused.

Principle of Totality

[64] Section 718.2 requires me to consider that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances, and that all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders. Where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

[65] In this case, a custodial sentence is required based on the principle of proportionality and the objectives of denunciation and general deterrence. The principles of parity, restraint and the goal of rehabilitation inform how long that sentence should be.

Analysis

[66] Denunciation and deterrence are the primary considerations for the Court when sentencing on this charge.

[67] Pentecost was in a position of trust and victimized a person under the age of 18. He continued to groom her for close to six months by sending Snapchats to VB and engaging in sexual banter. Pentecost hid his identity and actual age from VB. Pentecost and VB exchanged nude photos. At the time, VB was a person under the age of 18.

[68] In *Rushton*, 2017 NSPC 2 , Judge Buckle spoke about sentencing principles at paragraphs 87 and 88:

> 87 Sentencing ranges are important. They are intended to encourage greater consistency between sentences and respect for the principle of parity. However, "they are guidelines rather than hard and fast rules" (*R. v. Nasogaluak*, 2010 SCC 6 (S.C.C.) at para. 44). This was recognized by Scanlan, J.A. in *Oickle (supra)* at para. 40 when he said "it is not appropriate to set a bottom range or a top range for a particular offence without regard for the offender or other sentencing principles". He went on to quote Justice Farrar in *R. v. Phinn*, 2015 NSCA 27 (N.S. C.A.) where he refers to *R. v. N. (A.)*, 2011 NSCA 21 (N.S. C.A.):
>
> > [34] Unless expressed in the Code, there is no universal range with fixed boundaries for all instances of an offence: [Authorities omitted]. The range moves sympathetically with the circumstances, and is proportionate to the Code's sentencing principles that include fundamentally the offence's gravity and the offender's culpability ...
>
> 88 Sentencing judges are permitted to go outside the established range for a given offence as long as the sentence imposed is a lawful sentence that adequately reflects the principles and purposes of sentencing (*Nasogaluak (supra)*, at para. 44). This was recently affirmed by the Supreme Court of Canada in *Lacasse (supra)*, where Wagner, J., writing for the majority, said as follows:
>
> > 58 There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case. ...

[69] In reaching my decision, with respect to an appropriate sentence, I am most influenced by the decisions in *R. v. Ward*, *supra*, *R. v. P. (M.G.)*, 2015 SKPC 80 and *R. v. Blinn*, 2018 NSPC 32. I find these decisions to have the most similar features to the case before me.

[70] In *R. v. Ward*, the accused received three months in custody, to be served intermittently, which would allow him to continue his employment and rehabilitation with a professional. The accused randomly sent "friend requests" to the victim's Facebook account. The victim was 14 years old at the time of the offence. They messaged each other for a couple of days, with the accused suggesting they hang out, and that he would purchase alcohol for her so that they could drink together. The messages progressed to the accused asking her to meet him at a hotel and later suggesting meeting her for sex. The victim always declined. The victim's mother discovered the messages and contacted the police. This case is distinguishable from the case before me because in *Ward* there was no position of trust between the victim and the accused, the communications lasted a few days, no explicit pictures were exchanged, and the accused pled guilty to one count of luring.

[71] In *P.(M.G.)*, the accused was sentenced to four months in jail, followed by 12 months' probation. The accused pretended to be a teenager and chatted for hours with the victim, who was a person under the age of 16. He encouraged her to do acts of a sexual nature, including having sex with her cousin. He pleaded guilty to luring. He was a first-time offender and was deemed a low risk to re-offend. This is similar to Pentecost's situation but it still has many of the distinguishing features discussed above in *Ward*.

[72] In *Blinn*, the offender pled guilty to several offences, including one count of luring. He was sentenced to three months for each offence, to be served consecutively, followed by three years' probation. The sex offender assessment was generally positive, and the accused had abided by his bail conditions for 33 months. Blinn was found to be in a position of trust and the victims were very young.

Conclusion

[73] Pentecost's conduct in luring VB must be strongly denounced. His sentence must reflect society's intolerance for sexual abuse of children, as stated in *R. v. Hawkes* (1987), 81 N.S.R. (2d) 156 at p. 157:

> ... Sexual abuse of near helpless children by adults, upon whom they should be able to rely for protection, should incur sentences which hopefully deter the perpetrator and others so inclined and demonstrate society's revulsion of such conduct. Children must be protected; deterrence must be both specific and general, with emphasis on the general aspect of deterrence.

[74] I have reviewed the various cases considered by Judge Sakalauskas in *R. v. Ward*, *supra*, Justice Fichaud in *R. v. W. (E.M.)*, *supra* and Judge Gorman in *R. v. Nightingale*, *supra*, to assist in determining a range for an offence of this nature**.** The range spans from suspended sentences to conditional sentences to custodial time. What that review highlighted to the Court is that each case must be decided on its own specific circumstances, while applying the framework of the purpose and principles of sentencing.

[75] This is a serious offence. Pentecost's moral blameworthiness is high. A sentence that emphasizes denunciation and deterrence is warranted in the circumstances. While the actions of Pentecost in this case could have been more serious, that does not take away from the fact that his actions have resulted in harm to VB that will have an everlasting effect.

[76] Bearing in mind the aggravating and lack of mitigating circumstances, as well as Pentecost's personal circumstances, I find a fit and proper sentence in this matter to be 120 days' imprisonment, followed by two years' probation (I consider each year to comprise of 365 days).

[77] Pentecost would benefit from a sexual offender assessment mentioned in the PSR and any other treatment recommended by his probation officer. I would find these recommendations necessary for his rehabilitation and for the long-term protection of the public.

[78] The Crown has provided the Court with the following ancillary orders which I will grant:

- DNA Order, in accordance with s. 487.051 of the *Criminal Code* (Primary offence - Mandatory);

- Firearms Prohibition Order for 10 years after Pentecost's release from imprisonment, in accordance with s. 109(1)(a) of the *Criminal Code*; and
- SOIRA Order for 20 years in accordance with ss. 490.012(1) and 490.013(2.1) of the *Criminal Code*; and
- A 5-year Prohibition Order pursuant to s. 161 of the *Criminal Code* written to allow access to Pentecost's children.
- There will be a Non-Communication Order endorsed on the Warrant of Committal, pursuant to section 743.21 of the *Criminal Code* stating Pentecost shall have no contact, direct or indirectly with the victim, namely, VB, except with the consent of that individual and only for so long as that individual consents.

[79] There will be a period of probation, with conditions, for a period of two years from the date of this Order, as follows:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court; and
3. Notify the Court in advance of any changes of name or address, and promptly notify the Court or the Probation Officer of any changes of employment or occupation.

In addition, Pentecost shall:

4. Within 72 hours after completion of his jail sentence, report in person to the probation office located at 66 Wentworth Street, Suite 100, Sydney, Nova Scotia, or the probation office located nearest to the place of his release from custody. After that, he is to report as and when directed by the Probation Officer.
5. Reside at a residence approved in advance by the Probation Officer, and shall not change his residence at any time without first obtaining the written consent of his Probation Officer.
6. Remain within the province of Nova Scotia unless he receives written permission from his Probation Officer.
7. Not possess, take or consume alcohol or other intoxicating substances.

8. Not possess, take or consume a controlled substance as defined in the *Controlled Drugs and Substances Act*, except in accordance with a physician's prescription made out to him or receipt of a legal authorization.
9. Not have in his possession any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance.
10. Have no direct or indirect contact or communication with VB.
11. Attend for mental health assessment and counselling as directed by his Probation Officer.
12. Attend for substance abuse assessment and counselling as directed by his Probation Officer.
13. Participate in and cooperate with any assessment, counselling or program directed by the Probation Officer, and pay the cost or portion of the cost as directed by his Probation Officer.
14. Not attend or be within 50 metres of any place which is known to be the residence, school or workplace of VB, except while on a highway in a moving motor vehicle in transit to somewhere else.
15. Have no contact or communication, directly or indirectly, with VB, nor be in the presence of, any person known to be, or who reasonably appears to be, of the age of 16 years or less, except as follows:
    i. His children;
    ii. With the advance written consent of the Probation Officer; and
    iii. In the presence of an adult third party, with knowledge of this condition, approved in writing in advance by the Probation Officer.
16. Attend, participate in, and successfully complete any assessment, counselling or program as directed by the Probation Officer.

[80] That is my decision, Counsel. I would like to take this opportunity to thank counsel for their able representation and professionalism in dealing with the difficult and sensitive issues arising from this case. Pentecost, every ending presents the opportunity for a new beginning and I hope this marks one for you.

Bodurtha, J.