SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. J.D. (C.)*, 2023 NSSC 334

Date: 20231020
Docket: CRH 507396
Registry: Halifax

Between:

His Majesty the King

v.

J.D.C.

Restriction on Publication of any information that could identify the victim or witnesses: Sections 486.4 486.5 *Criminal Code*

D E C I S I O N

Judge:	The Honourable Justice James L. Chipman
Heard:	October 20, 2023, in Halifax, Nova Scotia
Written Decision:	October 23, 2023
Counsel:	Steven Degen, for the Crown Terrance Sheppard, K.C., and Samantha Gray, for Mr. C.

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

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

Order restricting publication — victims and witnesses

486.5 (1) Unless an order is made under section 486.4, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

By the Court (orally):

INTRODUCTION

[1] On July 17, 2023, this Court found J.D.C. (Mr. C.) guilty of sexual assault and sexual interference against B.D.W. (B.D.), contrary to sections 271 and 151 of the *Criminal Code*, RSC, 1985 c. C-46 (the "*Code*").

[2] The parties disagree on the appropriate sentence. The Crown recommends a sentence of seven to eight years in custody along with appropriate ancillary orders. Defence counsel proposes one year of imprisonment served consecutively for both offences.

[3] Having regard to the facts of the case and Supreme Court of Canada authority, I find the Crown submission to be far more realistic. To quote Justice Moldaver in *R. v. D.D.*, cited in *R. v. Friesen*, 2020 SCC 9 at para. 114:

> ... when adult offenders, in a position of trust, sexually abuse innocent young children on a regular and persistent basis over substantial periods of time, they can expect to receive mid to upper single digit penitentiary terms...

[4] I must now determine a fit and proper sentence for Mr. C.

THE ANCILLARY ORDERS

[5] The Crown requested and the Defence did not object to the following ancillary orders, respectively:

- A Weapons Prohibition Order (for 10 years and lifetime for prohibited and restricted weapons) (Section 109 of the *Code*);
- A DNA Order (Section 487.051 of the *Code*);
- A SOIRA Order (for 20 years), (Section 490.012 of the *Code*);
- A Prohibition Order (for 10 years), (Section 161 of the *Code*); and
- A Non-Communication Order (Section 743.21 of the *Code*).

[6] These Orders will form part of the within sentence.

CIRCUMSTANCES OF THE OFFENCES

[7] The facts of this case can be found in the trial decision (2023 NSSC 230). By way of review, I refer to these passages of my decision:

> [2] At all material times the complainant was Mr. C.'s step-daughter. Born as a female on [redacted], B.D. has recently transitioned and now identifies as a male. Given that the allegations pertain to the time when she was a pre-teen and teenager and because they involve groping and fondling of a female body, when discussing the allegations, I have exclusively referred to B.D. as a female. Further, to avoid confusion and for consistency, I have referred to all of the witnesses by their first names.
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> …
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> [85] I found BD gave compelling, honest evidence. She was candid in readily acknowledging that she could not remember exactly when the abuse started and ended. She did not embellish what went on and would not be drawn into saying that the abuse involved digital penetration of her vagina. When pressed about whether intercourse ever occurred, I found her response to be most believable. She spoke of being a teenager at the time and how she had never had anything placed in her vagina and how J. ultimately resisted penetrating her.
>
> [86] In terms of the sexual abuse that BD spoke about, I have no hesitation in concluding that she was being candid when she told of how J. fondled her and took his penis and rubbed it over parts of her body; in particular her breasts, buttocks and vagina. I also completely accept B.D.'s evidence surrounding how she touched J.'s penis at both residences. B.D. was visibly upset about this aspect of her testimony and while ever-cautious of demeanor evidence, I found her recounting of this to be entirely credible and reliable. The fact that she did not offer this information when she provided her October 29, 2020 police statement does not cause me concern. I accept that the police officer did not ask her about it, and I found B.D. credible when she said that she felt disgusting when she recalled these incidents.
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> …
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> [88] It is important to recall that B.D. spoke of the abuse happening from roughly age 10 to age 17. She provided enough detail concerning how the foundling and J.'s ejaculation occurred at both [redacted] and [redacted] such that I found her testimony both credible and reliable.
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> …
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> [98] Given all of the evidence I am satisfied beyond a reasonable doubt that J.D.C. sexually abused B.D.W. in the manner outlined in the two-count Indictment. The Crown has satisfied the Court of its heavy burden and convinced the Court

> beyond a reasonable doubt that Mr. C. committed the crimes and is guilty as charged.

Victim Impact Statement (VIS)

[8] B.D. provided a VIS to the Court. The impact of the sexual assaults on the victim are well documented in the VIS. For example, the VIS reads in part:

> It turns out that my problem with sex was never my sexuality or my gender identity, but the repeated trauma of being molested. Who would have thought. I need medical help when it comes to my mental state but it seems so far out of reach most days. I've self medicated since I was 14 using anything I can get my hands on that won't immediately ruin my life but it's getting old. I want to be the person I know I'm capable of being but this holds me back everyday, it's a lot easier to run away from these problems instead of fixing them especially considering my financial situation.
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> …
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> I've felt trapped ever since this started happening and I'm nowhere near knowing how to escape the thoughts and feelings. I'm constantly looking for validation that I've never felt, the feeling I'm looking for must not exist because it was supposed to come from my parents and it's just too late. … I never had the chance to be innocent, I never got to be a kid. …Pushing this to the back of my head for so long has left me unable to become a complete individual, all I am is something that charms and pleases in the hopes of being loved. I used to not care about my future because I never thought I'd make it far enough to need to worry about my education, not that I ever liked school
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> …
>
> I will always be a victim of my own father figure. That doesn't mean I'll never accomplish anything but it means it's going to be much harder, but if I can go through this I can go through anything.

[9] From the above it is clear that the crimes here had a profound and lasting impact on B.D.W.

CIRCUMSTANCES OF THE OFFENDER

Pre-sentence Report (PSR)

[10] Mr. C. is 47 years old. He was interviewed by probation officer Jordan Hart and the PSR is dated September 27, 2023 and authored by Mr. Hart. The PSR author also spoke with three friends of Mr. C., two of whom also employed him. Mr. Hart also spoke with Mr. C.'s mother.

[11] Unfortunately, Mr. C. experienced a difficult upbringing as noted at this para. from the PSR:

> Regarding life while growing up, Mr. C. noted he experienced a "terrible" home life due to the emotional and physical abuse he endured from Mr. J. C. The subject noted he was always fearful in the household which had a negative impact on his mental health and academic performance. Mr. C. stated he continues to suffer from PTSD and anxiety due to the abuse. Pertaining to his behaviour while growing up, Mr. C. stated he does not know if he misbehaved in the home frequently or just the subject of abuse. The methods of discipline in the household used by Mr. J.C. tended to be hitting the subject with his hands or belt, while Mr. R. would try to verbally discipline the subject instead and talk about issues with him.

[12] Mr. C. is a high school graduate who went on to become a painter. The two supervisors interviewed described Mr. C. as a solid worker and generally well-regarded.

[13] Mr. C. is financially stable without any outstanding debts. With respect to health and lifestyle, the PSR notes:

> Mr. C. reported various medical issues, including sciatic nerve issues, deteriorated rotator cuff, C6 and C8 vertebrae issues, hemorrhoids, enlarged prostate, persistent rashes, anxiety and having his gall bladder removed. Mr. C. reported he is currently taking Omeprazole for stomach acid issues. The subject noted he uses marijuana daily to help his mental health, and very rarely drinks. Mr. C. noted he is currently in counselling with Father B.L. at [redacted] Church and has been speaking with Father L. for roughly two years. Previously, Mr. C. noted he attended counselling through the IWK until his benefits ran out.

[14] Mr. C. is quoted as saying that he accepts the Court's ruling in this matter. He has no criminal record but for a dated, unrelated minor infraction. With regard to "assessment of community alternatives/resources", the PSR concludes with this:

> As this is a sexual offence, a comprehensive sexual offender assessment will be required to determine the match of offender risk level to treatment. The Provincial Sexual Offender Assessment and Treatment Program, as coordinated by the Provincial Forensic Psychiatry Service of the Capital District Health Authority, is designed at low to moderate intensity and is not designed to accommodate the treatment needs of high risk, entrenched sexual offenders – moderate to high intensity programs are appropriate for high-risk offenders and are available primarily within Federal facilities operated by the Correctional Service of Canada. Community based treatment includes cognitive behavioural relapse prevention programs and not individual therapy – treatment includes six months of structured weekly group sessions. Due to the volume of cases being processed, assessment /

> treatment could take two to three years to complete from the date of referral. Where the offender is deemed to have the financial means, payment for the assessment portion of treatment will be required at a cost of $1,000.00.

Letters of Support

[15] Contained with Mr. C.'s submission are ten letters/emails of support from Mr. C.'s family, friends, employers and colleagues. By all accounts Mr. C. is described as hardworking and kind-hearted.

SENTENCING PRINCIPLES

[16] Recently in *R. v. W.F.*, 2023 NSSC 282, Justice Bodurtha had cause to sentence an offender for the same offences, albeit in an even more serious context given the particulars of the offences and W.F.'s past criminal record of committing sexual assaults against children. Nevertheless, several of Justice Bodurtha's comments and authorities are of application here:

> 21 Sentencing is an individualized and discretionary exercise within the applicable confines of the *Criminal Code* provisions pertaining to the subject offences and specifically guided by the purpose, objectives and principles set out by Parliament in section 718 of the *Criminal Code*.
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> 22 The objectives of sentencing are codified in section 718 of the *Criminal Code*. They include the following objectives: the need to denounce unlawful conduct; to deter the offender and others from committing offences; to separate offenders from society where necessary; to assist in the rehabilitation of offenders; to promote a sense of responsibility and acknowledgement in offenders for the harm they have done; and to provide reparations for harm done.
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> 23 Section 718.1 directs that the sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The Court must also apply the principle of parity codified in section 718.2(b).
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> 24 Section 718(d) sets out the objective of "assist[ing] in rehabilitating offenders." Rehabilitation can be seen to achieve the objective of protecting the public as it assists in preventing further offences. An offender's "positive potential for rehabilitation" should be to the benefit of the accused on sentence: *R v. Gouliaeff*, 2012 ONCA 690, at para 12. In certain cases, where there is a realistic possibility of rehabilitation, the Courts may opt not to impose a jail sentence where it would otherwise be appropriate: *R. v. Preston*, 1990 CanLII 576 (BCCA).
>
> 25 In *R. v. Darby*, 2016 ABQB 352, the Court reviewed the principles of sentencing at paras. 49-51 and 53:

49 Section 718 sets out the fundamental purpose of sentencing: to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions. The sanctions have one or more of the following objectives:

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

50 A proper sentence fits both the offender and the offence; it should vary according to the circumstances of the offence and the circumstances of the offender. In *R. v. M. (C.A.),* [1996] 1 S.C.R. 500 (S.C.C.), the Supreme Court of Canada stated at para 82:

> ... In the final analysis, the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a "*just and appropriate*" sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender.

[Emphasis in original]

...

51 Section 718.1 states that "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender." The principle of proportionality is central to the sentencing process; it has a long history as a guiding principle in sentencing: *R. v. Nasogaluak*, 2010 SCC 6 (S.C.C.) at para 41. Proportionality is inherently linked to the moral blameworthiness of the offender. Lebel J stated at para 42 of *Nasogaluak*:

> ...the degree of censure required to express society's condemnation of the offence is always limited by the principle that an offender's sentence must be equivalent to his or her moral culpability, and not greater than it. The two perspectives on proportionality thus converge in a sentence that both speaks out against the offence and punishes the offender no more than is necessary.

...

> 53 Section 718.2 requires the court to consider a number of aggravating and mitigating factors, as well as to consider the sentences imposed on similar offenders for similar offences. Common aggravating and mitigating factors include planning and deliberation; association with a criminal organization; weapons; vulnerability of the victim; post-offence conduct; previous good character of the accused; potential for rehabilitation; age of the offender; remorse; and, guilty plea: *Clayton C Ruby et al, Sentencing*, 7th ed, looseleaf, (Markham, Ont: LexisNexis Canada, 2008), ch 5.

[17] In their submissions, both parties reference *Friesen*; however, the Defence (incorrectly in my view) references two pre-*Friesen* decisions in coming to their one-year sentence suggestion. As indicated at the outset, my sentencing disposition is more aligned with the Crown's submission. In this respect, I am of the view that the direction from the Supreme Court of Canada requires a much lengthier period of incarceration than the Defence is prepared to concede.

[18] In *Friesen*, the Court did not set specific sentencing ranges but said that mid-single digit penitentiary terms for sexual offences against children should be the "new norm" and that upper-single-digit and double-digit penitentiary terms should not be unusual or reserved for exceptional circumstances.

[19] In *Friesen*, the Court offered the following non-exhaustive list of significant factors Courts can use as guidance in determining a fit sentence for sexual offences against children:

- likelihood to re-offend;
- abuse of a position of trust;
- duration and frequency of the abuse;
- age of the victim, and
- the degree of physical interference.

[20] *Friesen* directs the Courts to consider the emotional trauma that sexual offences against children causes. For example, at paras. 55 – 56 the Court noted:

> 55 These developments are connected to a larger shift, as society has come to understand that the focus of the sexual offences scheme is not on sexual propriety but rather on wrongful interference with sexual integrity. As Professor Elaine Craig notes, "This shift from focusing on sexual propriety to sexual integrity enables

> greater emphasis on violations of trust, humiliation, objectification, exploitation, shame, and loss of self-esteem rather than simply, or only, on deprivations of honour, chastity, or bodily integrity (as was more the case when the law's concern had a greater focus on sexual propriety)" (*Troubling Sex: Towards a Legal Theory of Sexual Integrity* (2012), at p. 68).
>
> 56 This emphasis on personal autonomy, bodily integrity, sexual integrity, dignity, and equality requires courts to focus their attention on emotional and psychological harm, not simply physical harm. Sexual violence against children can cause serious emotional and psychological harm that, as this Court held in *R. v. McCraw*, [1991] 3 S.C.R. 72, "may often be more pervasive and permanent in its effect than any physical harm" (p. 81).

[21] Chief Justice Wagner and Justice Rowe (writing for the Court) continued by noting the type of individual harm that can result as a consequence of sexual assaults against children:

> 58 These forms of harm are particularly pronounced for children. Sexual violence can interfere with children's self-fulfillment and healthy and autonomous development to adulthood precisely because children are still developing and learning the skills and qualities to overcome adversity (*Sharpe*, at paras. 158, 184-85 and 188, per L'Heureux-Dubé, Gonthier and Bastarache JJ.; G. Renaud, *The Sentencing Code of Canada: Principles and Objectives* (2009), at s. 12.64). For this reason, even a single instance of sexual violence can "permanently alter the course of a child's life" (*Stuckless* (2019), at para. 136, per Pepall J.A.). As Otis J.A. explained in L. (J.-J.), at p. 250:
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> > [TRANSLATION] The shattering of the personality of a child at a stage where [the child's] budding organization as a person has only a very fragile defensive structure, will result - in the long term - in suffering, distress and the loss of self-esteem.

[22] The Court in *Friesen* also made particular note that these types of offences very often involve an abuse of trust and power position in which the offender exploits a child’s weaker position in society. The following three paragraphs are particularly relevant in the case of Mr. C., who abused his position as step-father to B.D. for his own sexual gratification:

> 65 The protection of children is one of the most fundamental values of Canadian society. Sexual violence against children is especially wrongful because it turns this value on its head. In reforming the legislative scheme governing sexual offences against children, Parliament recognized that children, like adults, deserve to be treated with equal respect and dignity (Badgley Committee, vol. 1, at p. 292; Fraser Committee, vol. 1, at p. 24, and vol. 2, at p. 563). Yet instead of relating to children as equal persons whose rights and interests must be respected, offenders

> treat children as sexual objects whose vulnerability can be exploited by more powerful adults. There is an innate power imbalance between children and adults that enables adults to violently victimize them (*Sharpe*, at para. 170, per L'Heureux-Dubé, Gonthier and Bastarache JJ.; *L. (D.O.)*, at p. 440, per L'Heureux-Dubé J.). Because children are a vulnerable population, they are disproportionately the victims of sexual crimes (*George*, at para. 2). In 2012, 55 percent of victims of police-reported sexual offences were children or youth under the age of 18 (Statistics Canada, *Police-reported sexual offences against children and youth in Canada, 2012* (2014), at p. 6).
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> 66 Children are most vulnerable and at risk at home and among those they trust (*Sharpe*, at para. 215, per L'Heureux-Dubé, Gonthier and Bastarache JJ.; *K.R.J.*, at para. 153, per Brown J.). More than 74 percent of police-reported sexual offences against children and youth took place in a private residence in 2012 and 88 percent of such offences were committed by an individual known to the victim (*Police-reported sexual offences against children and youth in Canada, 2012*, at pp. 11 and 14).
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> 67 It is for this reason that sexual violence against children can all too often be invisible to society. To resist detection, offenders perpetrate sexual violence against children in private, coerce children into not reporting, and rely on society's false belief that sexual violence against children is an aberration confined to a handful of abnormal individuals (see R. J. R. Levesque, *Sexual Abuse of Children: A Human Rights Perspective* (1999), at p. 11). Violence against children thus remains hidden, unreported, and under-recorded (*Report of the independent expert for the United Nations study on violence against children*, at pp. 8-9). The under-reporting of sexual violence against children is compounded by the ways in which the criminal justice system and the court process have historically failed children, including through rules of evidence premised on the assumption that children are inherently unreliable witnesses (see *R. v. Levogiannis*, [1993] 4 S.C.R. 475, at p. 483; N. Bala, "Double Victims: Child Sexual Abuse and the Canadian Criminal Justice System", in W. S. Tarnopolsky, J. Whitman and M. Ouellette, eds., *Discrimination in the law and the administration of justice* (1993), 232, at p. 233).

[23] *Friesen* additionally outlined the disproportionate impact that sexual violence against children has on young girls, as well as the unique considerations that can involve a victim who is a member of the LGBTQ2+ community at paras. 68 and 73:

> 68 Sexual violence also has a disproportionate impact on girls and young women. Like the sexual assault of adults, sexual violence against children is highly gendered (*Goldfinch*, at para. 37). The "intersecting inequalities of being young and female" thus make girls and young women especially vulnerable to sexual violence (*"The 'Statutory Rape' Myth"*, at p. 292). In 2012, 81 percent of child and youth victims of police-reported sexual offences were female and 97 percent of persons accused of such offences were male (*Police-reported sexual offences against children and youth in Canada*, 2012, at pp. 10 and 14). Sexual violence against

> children thus perpetuates disadvantage and undermines gender equality because girls and young women must disproportionately face the profound physical, emotional, psychological, and economic costs of the sexual violence (see *R. v. Osolin*, [1993] 4 S.C.R. 595, at p. 669; *Goldfinch*, at para. 37). Girls and young women are [page467] thus "still punished for being female" as a result of being disproportionately subjected to sexual violence (see The Hon. C. L'Heureux-Dubé, "Foreword: Still Punished for Being Female", in E. A. Sheehy, ed., *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (2012), 1, at p. 2).
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> …
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> 73 Similarly, LGBT2Q+ youth may be especially vulnerable because of the marginalization they continue to experience in society (*Too Many Victims*, at p. 9). Sentencing judges should be attentive to the ways in which LGBT2Q+ youth may "experience sexual assault differently than heterosexual victims" (M. Koppel, "It's Not Just a Heterosexual Issue: A Discussion of LGBT Sexual Assault Victimization", in F. P. Reddington and B. Wright Kreisel, eds., *Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System* (3rd ed. 2017), 257, at p. 269). Sexual violence may cause young LGBT2Q+ victims to experience unique forms of isolation and may negatively affect how they feel about the process of coming out. A lack of specialized services may compound these problems (see Koppel, at pp. 266-68).

Aggravating Factors

[24] The following statutorily aggravating factors are present:

1. The victim was under 18 years of age (s. 718.01, s. 718.2(a)(ii.1));
2. The offender was in a position of trust and authority in relation to the victim (s. 718.2(a)(iii)); and
3. The offence has had significant impact on the victim (s. 718.2(a)(iv)).

[25] The following aggravating factors established at common law are also present:

1. The duration and frequency of the abuse;
2. The age of the victim – an adolescent – when the abuse started;
3. The fact that the offences were committed in the victim’s homes, both those of the victim’s mother’s and the accused;
4. No protection was used; and
5. Mr. Chartrand supplied B.D.W. with marijuana.

Mitigating Factors

[26] Mr. C. does not have a criminal record. He is financially stable and has the support of family, friends and employers.

Post-*Friesen* Nova Scotia Sentencing Decisions

[27] The Crown provided the Court with these relevant authorities: *R. v. A.M.B.*, 2022 NSSC 262; *R. v. S.J.M.*, 2021 NSSC 235; *R. v. Hughes*, 2020 NSSC 376; *R. v. W.G.L.*, 2020 NSSC 323; *R. v. McNutt*, 2020 NSSC 219; *R. v. C.S.*, 2023 NSPC 34; *R. v. MacNeil*, 2023 NSPC 26.

[28] The Defence provided a number of dated cases and these Nova Scotia authorities post-dating *Friesen*: *R. v. R.B.W.*, 2023 NSCA 58; *R. v. W.G.L.; R. v. T.K.B.*, 2022 NSSC 150.

[29] I have already referred to *R. v. W.F.*, which I also draw on in consideration of a fit and proper sentence for Mr. C. In *W.F.*, Justice Bodurtha distinguished the case before him from the decision in *R. v. C.A.L.*, 2021 NSSC 365 as follows:

> 83 In *R v CAL*, 2021 NSSC 365, the defence argues that the circumstances of this case are similar to the case at bar because the accused was not willing to participate in the forensic Sexual Offender Assessment. The offender was sentenced to three years plus six months custody.
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> 84 In *CAL*, EH and her mother went to visit CAL to share the excitement of her birthday gift with his family. For the first incident that was remembered, EH testified that when they arrived at CAL's house, he grabbed her buttocks when he was walking behind them. A year later, the second incident occurred in the spare bedroom of CAL's home where he put his hand on her shoulder, forced himself on her and put his hand down her pants. The victim was only able to remember those two incidents but recalled that the sexual violence occurred frequently; when he would kiss her, it would be on the lips. He did not penetrate her but would touch her all over with his hands, including down her pants and on her groin (touching her vagina inside her clothing). This happened at his metal fabrication shop two or three times; however, there would be no kissing or forcing himself onto her there. In 2016, at 12 years old, EH and her family went camping at Kejimkujik National Park with CAL and his family. At one point, EH and CAL ended up in his trailer alone where he ended up doing the same thing (putting his hands down her pants, forcing himself onto her). CAL testified that EH was like part of his family; she spent a lot of time providing afterschool childcare to his firstborn, despite being quite young herself. Even in the face of repeated protests from CAL's wife that the two were too close, the sexual violence continued, and he justified the continued closeness with the fact that EH was just a kid and was like one of their own.

> 85 A significant difference from this case and the case at bar relies in recidivism. W.F. committed sexual crimes against young children in 1999 which CAL did not. In this case, there was also no penetration as it was cunnilingus, fellatio or reciprocal contact of sexual organs, unlike for the case at bar where there was vaginal penetration in addition to sexual touching. The level of trust comparing these two cases is not the same; in the case at bar, N.S went to visit her grandmother and W.F. when she was having a bad relationship with her mother. W.F. took advantage of that. It was not simply just a family friend like in the case of *CAL*. The offending behaviour in W.F.'s case also lasted over six years, whereas in *CAL*, it was just over a period of less than one month.

[30] Considering the above in the context of Mr. C.'s situation it is important to point out that as with C.A.L., Mr. C. does not have a prior history of sexual crimes against children. Having said this, the offending behavior with C.A.L. lasted under one month, whereas with Mr. C., he perpetrated his crimes over a period of many years.

[31] I have bourne in mind the non-exhaustive list of significant factors set forth in *Friesen*, the relevant *Code* sentencing provisions, Mr. C.'s aggravating and mitigating factors, and recent somewhat analogous cases in crafting a fit and proper sentence of six and one-half years.

[32] These were abhorrent crimes perpetrated against a completely innocent, vulnerable child throughout a period of over six years. The VIS is attestation for the lasting psychological impact on B.D.W. A father figure's actions for self-gratification devastated a young person who should have been nurtured, not exploited.

[33] I have kept in mind risk assessment and I decline the Defence proposal to adjourn this sentencing for Mr. C. to undergo a risk assessment as outlined in the PSR. Similar language is contained in the pre-sentence report summaries in some of the Nova Scotia authorities I have cited. Mr. C. will automatically undergo a risk assessment when he is placed within a federal institution. Accordingly, ordering a risk assessment is not necessary.

CONCLUSION / DISPOSITION

[34] As set forth at para. 5, I impose the following ancillary orders:

- Weapons Prohibition Order (for 10 years and lifetime for prohibited and restricted weapons) (Section 109 of the *Code*);

- DNA Order (Section 487.051 of the *Code*);
- SOIRA Order (for 20 years), (Section 490.012 of the *Code*);
- Prohibition Order (for 10 years), (Section 161 of the *Code*); and
- Non-Communication Order (Section 743.21 of the *Code*).

[35] Balancing all of the factors, the appropriate sentence for J.D.C. in this case is six and one-half years in custody.

[36] The *Kienapple* principle applies, and a judicial stay shall be entered on the s. 151 count, given that some of the criminal acts likely took place after B.D.W.'s 16th birthday and are therefore outside of the scope of the s. 151 count.

Chipman, J.