SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. J.D.C.*, 2024 NSSC 47

Date: 20240216
Docket: 499418
Registry: Sydney

Between:

His Majesty the King

v.

J.D.C.

Restriction on Publication: 486.4 and 486.5

Sentencing Decision

Judge:	The Honourable Justice Robin Gogan
Heard:	September 26, 2023
Oral Decision:	February 16, 2024
Counsel:	Bronte Fudge-Lucas, for the Crown Nash Brogan, for the Defence

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

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration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] J.D.C. is before this court under Indictment dated August 5, 2020. The Indictment charged J.D.C. with offences contrary ss. 271, 151(a), and 152 of the *Criminal Code*. On July 27, 2023, I found J.D.C. guilty of sexual assault and sexual touching. He was found not guilty of remaining charge.

[2] The trial decision is reported as ***R. v. J.D.C.***, 2023 NSSC 248. A pre-sentence report was requested and ordered. The sentencing hearing took place on September 26, 2023. I reserved my decision. Today is the first date that all parties were available to return.

[3] I am prepared to deliver a sentencing decision in this matter. I have considered the evidence offered at the hearing which includes a victim impact statement and a Pre-Sentence Report. I have considered the written and oral submissions of counsel and reviewed the authorities cited. I thank counsel for their submissions.

[4] What follows is a sentencing decision. The issue is the determination of a fit and just sentence in this matter. I will review the circumstances of the offences and the offender, consider the impact on the victims and the community, review the

sentencing principles, and refer to key authorities. I will conclude by imposing sentencing for the serious charges now before the court.

[5] Before turning to the analysis of sentence in this matter, I note that this proceeding comes after the decision of the Supreme Court of Canada in ***R. v. Freisen***, 2020 SCC 9. In ***Freisen***, our highest court recognized the inherent and profound impact of crimes of sexual violence against children and underscored Parliament's commitment to ensure that the sentences imposed for these offences reflect the true scope of harm. More will be said about that as I deliver my reasons.

Circumstances of the Offences

[6] The context for all that follows is the circumstances of the offences committed against the victim by a person who was the only […] she had ever known. The evidence at trial and the findings made by this court are contained in the written decision released on July 27, 2023. I found that J.D.C. had engaged in predatory and progressive sexual touching and sexual assault of […] when she was as young as 11 years old until […], when she was 14 years old. The sexual contact included frequent sexual intercourse and oral sex. The offences occurred between […] and […].

[7] It must be said at this point that the circumstances of the offences here are egregious. They involve an abuse of trust in the most fundamental way imaginable.

The progression involved the use of pornography and grooming behaviours. The escalation of sexual contact continued over a roughly 3-year period and involved innumerable individual incidents. J.D.C., an adult and a […], exploited a relationship of trust with the young victim for his own sexual gratification over an extended period of time. J.D.C. himself never gained the insight, even after years, to end the abuse on his own. The offences only ended when the victim's […] walked in on the final incident.

[8] It is challenging for the court to produce a succinct characterization of the offender's behaviour. Notwithstanding the difficulty, sentencing courts must be alive to the full scope of harm caused by the sexual abuse of children. The Supreme Court of Canada in ***Freisen*** directed fulsome consideration of the inherent harm caused by sexual offences. This was referenced recently by our Court of Appeal in ***R. v. R.B.B.***, 2024 NSCA 17 (at para. 15):

> [15] The legislative scheme dealing with child luring and sexual offences involving children focuses courts on the emotional and psychological harm, in addition to the physical harm caused by sexual offences. Although actual harm may vary from case to case, sentencing judges must give effect to the inherent wrongfulness of the offences, the potential harm to the children, and the actual harm in each case …

[9] Without question, the inherent harm caused by the sexual offences in this case is very serious and will be given much weight in the assessment of a fit and proper sentence for the offender.

Impact on the Victim

[10] At this point, I want to spend a moment and review the impact of these offences on the victim.

[11] I had the benefit of hearing the victim testify at trial. I also have her victim impact statement and the information she provided in the Pre-Sentence Report. She says that these events changed her life. She has post traumatic stress and anxiety. She has had psychiatric care for years. The path of her life has been impacted by fear and a sense of betrayal. Her education was delayed, and her relationships overshadowed by a lack of trust. She continues to have low self-esteem. These experiences and their legacy are a barrier to stable employment.

[12] These were the comments that the victim had the courage to share. I thank her for providing the Court with information about the specific impact of the offender's actions. And I accept that a victim impact statement is not a substitute for living with the daily impacts of childhood sexual abuse.

[13] Without question, these offences have a profound impact, and a fit sentence must express society's condemnation.

Circumstances of the Offender

[14] At this point I turn to consider the circumstances of the offender. What I know of the offender's circumstances comes the trial evidence and the Pre-Sentence Report.

[15] The offender is 53 years old and married. He has two children from a previous marriage and two stepchildren from his present marriage. He grew up in Donkin, Nova Scotia. He was adopted by his maternal aunt and uncle as a young boy. He has three siblings. Both his biological and adoptive parents are deceased. There is nothing remarkable in his early years. He reports that he only found out he was adopted at age 18 which caused some family strain. He has been distant from his siblings since charged with the present offences.

[16] The offender and his spouse have been together for 15 years. His wife describes him as a kind, soft-spoken and loving person. She does not accept that he committed the present offences and remains supportive of him. One of his sons participated in the report and described his father as a loving and involved parent who has been a good provider for his family. Other friends and family expressed similar opinions.

[17] The offender has a high school education and further training as a commercial transport driver as well as in the electrical and welding fields. He worked in the

fishing industry for 30 years. For periods of time, the offender worked at various jobs in Alberta. He currently owns his own delivery business. The evidence indicates he has had stable employment during his adult years and maintained a good income from his own business until convicted of the present offences. The offender has good health and no addiction issues. There is a distant but related criminal record.

[18] Overall, the Pre-Sentence Report is positive. The offender is a diligent worker and a good provider with a strong support system.

[19] Before moving on to analyze the appropriate sentence, I will briefly review the positions of the parties.

Positions of the Parties

The Crown

[20] The Crown submits that the circumstances of the offences are extremely aggravating, and a fit sentence must emphasize denunciation and deterrence. It seeks a 7-year sentence. The Crown also seeks a number of ancillary orders.

[21] In support of its sentencing position, the Crown provided an extensive written submission citing numerous authorities with emphasis on the reasons in ***Friesen***.

The Crown provided a summary of decisions which it submitted would assist the Court in its parity analysis.

The Offender

[22] The offender submits a 4–5 year sentence is appropriate and reflects a proper balancing of the sentencing principles. He emphasizes he has been a productive member of society, a good provider to his family, and is a good candidate for rehabilitation. In his submission, there is no risk to reoffend upon his re-entry into society.

Analysis

The Principles of Sentencing

[23] I turn now to a brief discussion of the sentencing principles.

[24] The goal of every sentencing exercise is to impose a fit sentence crafted in accordance with the principles of sentencing. Sentencing is a highly contextual and individualized process.

[25] The fundamental purpose of the principles contained in the *Criminal Code* is to contribute to respect for the law, and maintenance of a just, peaceful, and safe society, by imposing sanctions that attain various objectives. The objectives include

denunciation, deterrence of the offender and others, separation from society where necessary, rehabilitation, reparation, accountability, and acceptance of responsibility. Which objectives deserve emphasis will change depending on the circumstances of the case, the presence of mitigating or aggravating factors, and the need to effect parity and proportionality.

[26] The sentencing sections of the *Criminal Code* contain a non-exhaustive list of aggravating factors, some of which apply here. This case involves the abuse of a person under the age of eighteen, the abuse of a position of trust, and criminal acts which have a significant impact on the victim. More will be said about the mitigating and aggravating factors here in a moment.

[27] As noted recently by our Court of Appeal in ***R. v. R. B.B.***, 2024 NSCA 17, "… all sentencing analyses start with the principle that sentences should be proportionate to the gravity of the offence and the degree of responsibility of the offender. Parity aims to have offenders who commit similar offences in similar circumstances receive similar sentences. Parity is an expression of proportionality. Earlier cases with similar facts and offences offer guidance …"

[28] ***R.B.B.*** is a case that considered the impact of the very blunt guidance provided by the Supreme Court of Canada in ***Friesen***. That impact was also considered

recently by Justice Keith in ***R. v. Shaw***, 2023 NSSC 411, at paras. 44-49, and I quote from his summary:

> [44] … in *Friesen*, the Supreme Court of Canada closely examined in the unique and often poignant problems that arise in circumstances of sexual violence against children and became engaged in certain principles which apply specifically to these types of cases.
>
> [45] In *Friesen*, the Supreme Court of Canada:
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> 1. Confirmed that the sentence must recognize the inherent wrongfulness of these shocking crimes; the potential, reasonably foreseeable harms which the victim and society will be compelled to address when these types of crimes of committed; and, of course, the actual harm suffered (at paras 76-82).
> 2. Recognized Parliament's decision to increase the maximum sentence available for crimes against children and the corresponding signal that sexual violence against children must attract more severe sentence which prioritize denunciation and deterrence. (at paragraphs 95 – 105).
> 3. Responded with the strongly worded declaration that the Court is determined "to ensure that sentences for sexual offences against children correspond to Parliament's legislative initiatives and the contemporary understanding of the profound harm that sexual violence against children causes." (at paragraph 106).
>
> [46] To ensure the Court moves forward in the right direction, the Supreme Court urged sentencing judges to be "cautious about relying on precedents that may be "dated" and fail to reflect "society's current awareness of the impact of sexual abuse on children." (at paragraph 110) As well, sentencing judges may be "justified in departing from precedents in imposing a fit sentence; such precedents should not be seen as imposing a cap on sentences" (at paragraph 110)
>
> [47] The overall message that the Court in *Friesen* described as "clear" was that: "mid-single digit penitentiary terms for sexual offences against children are normal and that upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances." (at paragraph 114)
>
> [48] Helpfully, the Court also provided the following instructions to be applied when imposing sentences for adults convicted of sexual crimes against children:

> "(1) Upward departure from prior precedents and sentencing ranges may well be required to impose a proportionate sentence;
>
> (2) Sexual offences against children should generally be punished more severely than sexual offences against adults; and,
>
> (3) Sexual interference with a child should not be treated as less serious than sexual assault of a child."
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> (*Friesen*, at paragraph 107)

[49] Finally, the Court offered additional practical guidance by listing a number of specific factors that bear upon the process of fashioning a fit and proper sentence in these types of cases:

1. **Likelihood to Reoffend**: This factor reinforces the broad societal imperative to protect children by separating those who demonstrate a risk to their sexual and physical integrity (at paragraph 122 – 24).
2. **Abuse of a Position of Trust or Authority**: This factor recognizes both the insidious nature of the crime where a trusting relationship is debased into one of sexual exploitation and the corresponding trauma caused when a victim is abused by a person entrusted with their protection and well-being. (at paragraph 125 – 129). Thus, the Court emphasized that: "all other things being equal, an offender who abuses a position of trust to commit a sexual offence against a child should receive a lengthier sentence than an offender who is a stranger to the child." (at paragraph 130).
3. D**uration and Frequency** (at paragraphs 131 – 133).
4. **Age of the Victim**: The Court descried this as a "significant aggravating factor" due not only to the relative vulnerability of a young person but also the moral blameworthiness of a person who exploits their age as a method of sexual control (paragraphs 134 – 136).
5. D**egree of Physical Interference** (paragraphs 137 – 147). The Court confirmed that "the degree of physical interference is a recognized aggravating factor. This factor reflects the degree of violation of the victim's bodily integrity. It also reflects the sexual nature of the touching and its violation of the victim's sexual integrity." (at paragraph 138) …

[29] Having summarily reviewed the basic sentencing principles relevant to this case, I turn to their application.

Sentencing Decision

[30] I note in preparing this decision, I raised the application of the ***Kineapple*** principle with the parties. This principle permits a stay in circumstances where the convictions arise from the same facts and legal nexus. Both parties conceded that this principle applies here and operates to stay the s. 271 conviction. On this basis, the s. 271 charge is stayed, and I proceed to impose a sentence for the s. 151(a) offence.

[31] The duty of this Court is to craft a fit sentence. A fit sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Each of these are separate and distinct inquiries.

Gravity

[32] In terms of gravity there can be no question that the conduct here was very serious. I agree with the Crown submission that there are many aggravating factors and little in the way of mitigating considerations.

[33] The offender was convicted following trial of the sexual abuse of his […]. He was an adult, and a […], who progressively abused a young and vulnerable child in her formative years, from the age of 11 to 14, for his own selfish purpose. The

increasingly intrusive sexual acts continued over several years. It involved the full spectrum of sexual activity and happened frequently and consistently to the point that it was part of the victim's everyday experience. At an age when this young girl was on the cusp of puberty, the offender introduced her to pornography and asked her to act out what she was viewing. I find it hard to contemplate the harm this caused at such a crucial point in the victim's life.

[34] The conduct occurred while the victim was in the care of someone, she should have been able to trust with her wellbeing, in places that she was entitled to feel safe and secure. There is inherent harm to the victim, her family and community, as well as actual harm to the victim. The victim has had years of psychiatric treatment yet continues to carry emotional scars. She has trust issues, and her relationships are burdened by ongoing fear and anxiety. The legacy of sexual abuse has interfered with her education and employment. I recall that the victim has a tattoo on her arm to remind her that she is a survivor – something that serves as a permanent reminder of all that she has endured.

[35] The offender denies that he did any of the things this Court found him guilty of committing. That is his right. Unlike other considerations, this is not an aggravating factor. But that also means that the Court has little in mitigating considerations. There is no expression of remorse, no acceptance of responsibility,

no evidence of insight into his behaviour or the possibility of rehabilitation, and little evidence on which the Court can assess the likelihood of future risk or safe reintegration into the community. His family and friends offer support, but that support is based firmly on the belief that he did not commit these offences.

[36] The offender has a criminal conviction for an assault that occurred between 1987 and 1989. The offender was a youthful offender at the time. The offence involved the assault of a young relative. The parties disagree on how to characterize this record for sentencing purposes. On balance, I find it an aggravating consideration based on its circumstances. But I also consider the age of that conviction, the age of the conduct underlying the present convictions, and recognize that there are no other convictions for related conduct since 2009. I note that the offender has been with his present spouse for the last 15 years and I infer that this has been a positive relationship and a stabilizing influence.

[37] Overall however, the circumstances present in this case mean that the sentence must emphasize denunciation and express condemnation. It must strongly deter the offender from repeating his egregious behaviour. It must also serve as a message to others who may consider preying on children for sexual gratification that there are severe consequences.

Degree of Responsibility

[38] I must go on to consider the offender's degree of responsibility and factors impacting the offender's culpability. These include the offender's personal circumstances.

[39] The offender's personal history provides no solid insight into his behavior. He was cared for as a child and not exposed to any notable trauma. He was educated and had ongoing training. He is obviously a capable person. He has a good employment record that demonstrates hard work and diligence. He has been a good provider to his family. He has no mental health issues aside from the stress of the present proceeding. There are no addiction issues. His family and friends describe him as a good father and husband. The trial evidence included reference to an acute mental health episode but there is nothing in the sentencing evidence to suggest any chronic or ongoing mental health issue exists.

[40] That said, the nature of the offences here involved exploitation of the offender's position as a […] to the victim. He knew what he was doing was wrong. He is the father of […] children who say he is a good father. Instead of acting as the […] of a young and vulnerable girl should, he took advantage of the trust, the

responsibility, and the relationship. I am reminded of the trial judge's description of this type of betrayal in ***R. v. E. M. W.*** (reproduced at 2011 NSCA 87, at para. 13):

> 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 an adult, the child is reduced to being a nameless thing. She is robbed of her innocence. She has no choice in the matter. She is simply used. She has become a means to an end.
>
> When the person who has tried to turn a child into an object is a […], the sense of moral outrage is almost unrestrained. There is no way to speak of these kinds of crimes without using language that reflects the sense that the most basic of moral standards has been violated. They are described by judges as being horrific, shocking, selfish, sordid, despicable, reprehensible, repugnant, and deprived.

[41] I adopt Justice Campbell's words. I find the offender's moral blameworthiness in this case very high.

Parity

[42] In the context of these findings on proportionality, I must consider parity. This principle requires similar sentences for similar offenders who commit similar offences. On this point, the Crown provided extensive authorities that gave me guidance on how to achieve parity in the sentence I impose. Both sides recognized that the decision in ***Freisen*** means that cases decided before it must be considered with caution.

[43] I reviewed the decisions provided as well as the Crown's very helpful chart of comparator cases found starting at p.18 of its written submission. I will not list those cases given the number of them but note that the sentences imposed in those cases ranged from a low of 3.5 years to a high of 9 years in custody with most sentences being in the 5-to-9-year range. It is the Crown's view that the most similar are ***R. v. Boucher,*** 2020 ABCA 208, where the sentence was 8 years, ***R. v. D.C.,*** 2020 NLSC 78, where the sentence was 7 years and ***R. v. C. S.,*** 2023 NSPC 34***,*** ***where*** the sentence was 7 years. I note in the recent decision in ***Shaw***, Justice Keith found, at para. 67, the range of sentences for offences involving a breach of trust, and escalating sexual abuse unfolding over a longer period, was 6 -7 years.

[44] No two cases are exactly the same. I return to what I will call the ***Freisen*** factors and place considerable weight on the age of the victim, the abuse of trust, the duration and frequency of the abuse, and the egregious physical interference. There is a high degree of inherent harm as well as lasting psychological trauma. The conduct was grave and the offender's responsibility very high. There are few mitigating factors. However, I do recognize the offenders age, the lack of criminal record since 2009, his family support and diligent work record as evidence supporting a reduced likelihood to reoffend. But the aggravating factors call for a sentence that strongly emphasises denunciation and deterrence.

Sentence

[45] J.D.C. – please stand.

[46] For the offence contrary to s. 151(a) of the *Criminal Code of Canada* - I impose a custodial sentence of 7 years.

[47] All of the ancillary relief sought by the Crown is granted.

[48] This concludes my sentencing decision.

Gogan, J.