IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Bird, 2007 NSPC 73

Date: 7December2007
Docket: 1552144
1552146
1552147
1552149
Registry: Halifax

Her Majesty the Queen

v.

William Junior Bird

Judge:	The Honourable Judge Castor H. Williams
Decision:	December 7, 2007
Charge:	**272(2)(b); 88(2)(a); 72(1); 811 cc**
Counsel:	Cheryl Byard for the Crown Don Murray for the Defendant

Introduction

[1] The Crown has made application for the Court to declare the respondent, William Junior Bird, who is now forty-nine years old, a dangerous offender. The respondent argues that he should be designated a long term offender as there is a reasonable possibility of eventual control of his risk within the community.

[2] Mr. Bird has pleaded guilty to the predicate offences of sexual assault with a weapon [s.272 (2)(b)] where the victim was a fifty-seven-year-old female; possession of a weapon for the purpose of committing an offence [s.88 (2)(a)]; forcible entry on real property [s.72 (1)], and breach of a recognizance [s.811] all of which occurred on May 30, 2005 in the Halifax Regional Municipality. In addition, on August 31, 1994, he was convicted of sexual assault causing bodily harm [s. 272 (c)] where the victim was an eighty-three-year-old female. He was sentenced to nine years imprisonment with a lifetime weapons ban. Also, on July 29, 1985 he was convicted of sexual assault with a weapon [s. 246.2 (a)] of a sixty-one-year-old female victim, for which he received a sentence of six years imprisonment. Likewise,

on January 20, 1983, he was convicted of assault causing bodily harm [s.245] for which he received two years probation. Other criminal conducts for which he has not been tried were two allegations of assaults.

Summary of the Position of the Parties

(a) *The Crown (Applicant)*

[3] Essentially, the Crown has submitted that it has met the burden that the respondent meets not only all the statutory criteria of a dangerous offender but also can satisfy the criteria of a long term offender. However, counsel takes the position that the sentencing sanctions under the long term offender provisions are currently incapable of reducing to an acceptable level, the threat to the life, safety or physical or mental well being of other persons. In support, she pointed out that the prospects for treatment, given the respondent's criminal conduct and his personal circumstances, were at best speculative and there is no reasonable possibility of eventual control.

[4] Likewise, there is nothing on the record that the respondent discussed

with the psychiatrist or the pharmacologist or led any evidence that he would be agreeable to chemical castration or pharmacological treatment. Furthermore, there is evidence that he has received treatment in several areas such as a program for sex offenders, substance abuse and anger management, to address his criminogenic tendencies. However, these programs have failed to prevent him from "reoffending sexually (outside of the institution), or from ceasing the use of intoxicants (inside and outside the institution) . . . even when he was on conditions of a peace bond . . . "

[5] Thus, given his treatment history, a repeated pattern of failure, there is no current evidence of a reasonable prospect of treatability that is more than an expression of hope. He has had opportunities for rehabilitation within the prison system with significant failings. Most telling for suggested future treatment is that he cannot be compelled to take medications, with significant side effects, that would reduce his sex drive and, he has a history of discontinuing medication due to his perceptions of their side effects. Even so, it has not been shown that his sex drive is the impetus to his re-offending.

[6] Additionally, given that his limited family support and previous

community support has proved unsuccessful, he would require restrictive conditions imposed on a twenty-four-hour supervision basis which, on the evidence, is currently unavailable. Given all these factors, he would be unmanageable in the community when eligible to be released on parole. As a result, for the protection of the public, the dangerous offender designation is appropriate.

(b) *William Junior Bird (" the respondent*")

[7] The submissions on behalf of the respondent concede that the Crown, without a doubt, has established the technical and substantive requirements for a dangerous offender designation and also satisfies the long term offender criteria. However, counsel has submitted that the Court has a discretion, that he is urging it to exercise and entreats that it considers all available sanctions that are reasonable in the circumstances. To this end, counsel has requested the Court to consider whether it would be appropriate to sentence the respondent for more than two years imprisonment; whether there is a substantial risk that he would reoffend and whether there is a reasonable possibility of eventual control of the risk in the community.

[8] Additionally, counsel submitted that although the respondent is a slow learner, he, nonetheless, has the capacity to make choices if motivated to change as he does not suffer from an inherent defect of character that would render the possibility of change and the reduction or control of risk unrealistic in the community. The focus of the sentencing regime should be on "risk reduction" rather than "risk elimination" as the respondent's amenability to treatment and the prospect for the success of such treatment are critical factors. Furthermore, the risk presented is manageable within the community on a treatment proposal.

[9] Continuing, counsel submits that realistically, what is required is the identification of the "panoply of available therapies that have the capacity to make some difference in a person's risk factors . . . " On this basis, the Court would then have to determine whether those strategies could reduce the person's risk "to permit managed release into the community." However, it is only in cases where a person's history reveals a refusal to accept therapy or an inability to learn less risky behaviour should he be deemed to be an unacceptable risk to the community and be declared a dangerous offender.

[10] A conservative approach to risk management, conceivably could allow a person to languish in prison despite the fact that resources capable of controlling his risk exist in a less restrictive environment. However, it is acknowledged that there exists a tension between court decisions that hold that the current availability of community resources necessary to implement supervision should be certain and those that hold that predicting the availability of resources at the time of release would be foolhardy. In the former situation the respondent would be declared a dangerous offender and, in the latter, a long term offender. As a result, counsel urges the Court to adopt the latter course as it would still retain the authority to convict and sentence the respondent for breaches of a long term supervision order. To that end counsel proposed a sentencing recommendation for the respondent as a long term offender.

Psychiatric and Psychological Reports and other Opinion Evidence

[11] In addition to the numerous and voluminous varied assessments and reports generated by Correctional Services Canada, this Court also reviewed the *Capital Health Assessment Report* electronically authenticated by Dr. P.

Scott Theriault, forensic psychiatrist, and presented pursuant to the ***Criminal Code***, s.752.1. Additionally, the Court reviewed the *Comprehensive Risk Assessment Report* authored by Dr. Angela Connors, a clinical and forensic psychologist.

[12] In his written report that he amplified in his *viva voce* testimony, Dr. Theriault opined that, as the respondent has a well-established pattern of offending it was likely that any re-offence "would include many of the same elements (use of intoxicating substances, female victims, use of threats or weapons, use of physical violence, high degree of sexual intrusion)." Likewise, given his difficulty to abstain from dysfunctional means of coping while in environments with fewer restrictions, it is "not clear that any community constraints would adequately reduce [his] risk to re-offend apart from a highly structured and monitored setting," as his ability to do well in treatment does not correlate to his risk of re-offending. He opined further that the respondent has a number of psychological vulnerabilities that far outweigh his sexual drive and if his sex drive is not an issue, pharmacological intervention, because of the side effects, would not be appropriate and it would not be of much help. Moreover, there exist ethical problems if the

person does not volunteer for treatment.

[13] Here, although he did not diagnose the respondent as a sexual sadist that aspect, because of his callousness toward his victims, did not vitiate the respondent's risk assessment. Dr. Theriault, nonetheless, asserted that it is not apparent that the respondent has an elevated sex drive and that it is not clear whether this was a factor in his offences. Additionally, it was his view that it is not clear that the respondent has a deviant sexual interest that would warrant a diagnosis of deviant sexual interest. All the same, he found that the respondent has a personality disorder and might be using drugs as a coping mechanism as his cognitive techniques are also impaired and weak. Further, the respondent appears to require an opportunity to practice relapse prevention skills and to have an opportunity to succeed and his risk drops off as a function of age. From this perspective, the respondent is not a full write off but presents a challenge.

[14] Addressing the issue of management of risk within the community and assuming that the respondent went to a community correctional centre, it was Dr. Theriault's view that he would require 24 hour supervision, curfew

obligations, regular random substance testing, obligations to use antabuse drugs, obligation to adhere to anti-androgen drugs, and with authority to suspend community contact if no compliance. However, it was also his view that these controls would be required only to manage the respondent's pattern of behaviour but that they would not address the internal requirements, as clinically, he may still require supervision after a long term supervisory order. This scenario would not be dissimilar to mental health persons released into the community.

[15] Notwithstanding this view, Dr. Theriault also opined, on the same issue, that outside of an institutional setting there may not be any successful monitoring. Presently, group homes have no staff and expertise to deal with persons like the respondent because of his long term risk, "anger impulsivity and assault." Any appropriate community correctional centre would have to be a highly structured forensic hospital. Furthermore, his concerns would be that there is in place proper monitoring to ensure compliance with medication, if prescribed, and proper monitoring to assure no relapse because of peer group association. According to him, the respondent's problem is multi-functional and is not dependent upon sexual deviance.

[16] Furthermore, it was also Dr. Theriault's view that as the respondent's reaction to previous sexual offender treatment had been "inadequate," without "the clear presence of an elevated sex drive, or a deviant sexual interest, the use of medications to reduce [his] sex drive would not be expected to have a significant effect on reducing his risk for sexual recidivism." Also and notably, based on his pattern of substance abuse, even while on a recognizance order to refrain from so doing and during abuse treatment programs while incarcerated, the respondent "would not be expected to remain abstinent from intoxicating substances while in the community."

[17] He concluded in his report, (p.16) that:

> It would appear difficult to manage Mr. Bird's risks to re-offend in the community unless he were maintained in a highly structured, and highly supervised setting.

[18] According to Dr. Connors' report that she also amplified in *viva voce* testimony, given the Respondent's early experiences of deprivation and abuses that shaped his development negatively, the absence of any secure or positive attachments with females and his sexual focus on self-gratification,

she opined at p. 38:

> ... there is very little positive adjustment in any area of Mr. Bird's past for him to rely on as an anchor for relapse prevention, meaning that all of the skills he has attempted (with varying levels of motivation) to achieve in programming have required effort at the foundation level. Under such conditions, and with the further impediments of cognitive delay and personality disorder including psychopathic traits and explosive aggression, prognosis is not good.

[19] She also opined that even though he has made progress in stabilization that did not equate to effective relapse prevention. Self-management was not one of the respondent's strengths and given his "history and constellation of psychological factors, it is highly unlikely that he would do well without external management." She opined further at p.39:

> Given Mr. Bird's continued crime cycle behaviour even while incarcerated (substance abuse, aggressive outbursts, poor peer relations, disrupted motivation to apply himself to work/school/programs, and ongoing displacement of personal responsibility), the likelihood that Mr. Bird could do better once released to the community with neither supervision nor support was low.

[20] Nonetheless, Dr. Connors recognized that the respondent has cognitive challenges and that there may be the need for him to repeat treatment programs to achieve self-management. Also, it may be reasonable for him to

make some progress if he were to undertake another intensive sexual offender treatment program for persons with cognitive challenges. However, it was also her opinion, that it would be unlikely for him to achieve sufficient self-management "in the absence of external structure[s]."(p.39). She also did not think that chemical treatment would be optimal but she would not rule it out.

[21] Even so, Dr. Connors concluded, in her report at p.40:

> In summary, Mr. Bird has committed three violent sexual crimes that bare many similarities in victim selection and form, and have characteristics suggestive of sexual sadism. Mr. Bird has not responded to (specialized) treatment, and has recidivated after every period of federal incarceration thus far. He is assessed to pose a high risk for violent sexual recidivism of the nature that could result in the bodily harm or death of a victim. Although Mr. Bird has shown the ability to make some progress as a result of time and intervention, and it is possible he may make more, it is considered unlikely that his progress will be substantial enough to build sufficient skill in the majority of Mr. Bird's high risk areas. It is considered that external management, as was requested by Mr. Bird himself, is the best option for ensuring that no one is harmed when Mr. Bird experiences failures in self-management and escalating crime cycle.

[22] Dr. Peter Mullen called on behalf of the respondent, after some discussions, was qualified only in the field of pharmacology to give opinion evidence on the effects of drugs in the human body. He testified as to the effects of drugs and in particular anti-androgen drugs on the human body.

He had no contact with the respondent but reviewed Dr. Connors' report and other pharmaceutical source literature. However, in my opinion, he did not add much more to the complex issues, as essentially, not having interviewed the respondent, he could neither predict nor say whether the respondent is an eligible candidate now or in the future for chemical therapy.

[23] The Court notes that Sandra Piekarski, the respondent's case worker, in 1991 at the Parrtown community correctional centre had referred him for a psychological followup and he was assessed by one D.M. Desjardens, Psychologist. The psychologist's report that was endorsed by Piekarski, in her testimony, stated (Exhibit 6, p. 310):

> Based on the review of documents submitted and the brief contact with Bill it is this writers opinion that Bill does have potential to develop appropriate coping skills and to benefit from programs. Given the lengthy period of institutionalization in correctional settings and psychiatric facilities it is recommended that a gradual release through a half-way house be attempted again. Also efforts should be made to connect with community mental health services which can be put in place once correctional supports are removed. This man would likely be a good candidate for placement in a mental health group home. Efforts should be made to provide Bill with literacy training, job training, drug and alcohol abuse programs as well as with a counselor who may assist him with the transition into a less structured environment. Given his long history of institutionalization and personality dynamics prognoses is guarded.

[24] In her testimony, Piekarski when asked, asserted that there are neither community correctional centres nor facilities for persons with mental disability in the Maritimes. She also intimated that the respondent was institutionalized and that “deinstitutionlzation depends on the individual and would take a long time.”

[25] Renee Spurrell was a senior parole office who also dealt with the respondent. In her *Assessment for Decision*, in 2001, when the respondent was in the Dorchester Penitentiary, (Exhibit 6, at p.112) it was reported that the respondent, on release, “ will also need to reside in a highly structured environment,” as the respondent is a high need individual and more time was needed to be spent with him.

Issues

[26] Therefore, as agreed upon and submitted by counsels the substantial and fundamental issue is whether the Court, on the evidence presented, would declare the respondent a dangerous offender with an indeterminate sentence, or declare him to be a long term offender with a definite term of

imprisonment followed by a period of supervision within the community.

Analysis

[27] The Court accepts that ***R.v. Johnson***, [2003] S.C.J. No.45 stands for the proposition that, among other things, its inquiry should also focus on "whether the sentencing sanctions available pursuant to the long term offender provisions are sufficient to reduce his threat to an acceptable level." [para. 29]. This Court also recognizes that in a proper case sufficient community supervision can satisfy the precondition for a long term offender designation. See: ***R.v. Lalo***, [2004] N.S.J. No. 299, 2004 NSSC 154, ***R.v. Hart*** , 2001 CarswellNS 309 (N.S.S.C.).

[28] In ***R.v. Goodwin***, [2002] B.C.J. No. 2116, 2002 BCCA 513, it was determined that Goodwin was not a dangerous offender as, on the facts, there existed a structured appropriate halfway house and he had consented to take anti-libidinal medication and he could be controlled through a community supervision order. However, since ***Johnson***, *supra*., recent case law articulates the proposition that the risk management inquiry mandated in

Johnson, *supra.*, contemplates the assessment of presently available resources rather than future, speculative and uncertain measures sufficient to control the current risks. See: for example, ***R.v. G.L.***,[2007] O.J. No. 2935, 2007 ONCA 5548., paras. 56-59., ***R.v. G.(M.A.***) 2006 CarswellBC 2510 (B.C.S.C.).

[29] However and overall, William Bird manifests a constellation of complex emotions with dysfunctional impressions and means of coping. Also, he appears to present a cry for help in that he seems to be conscious of the phenomenon, even though his intelligence, when assessed, indicated that "he falls within the borderline range (the border between mild retardation, and below average intellectual functioning)," that his receptor senses receive stimuli of various kinds that produce sensations that he struggles to control through the medium of his will. Even so, at the same time his reasoning faculties that help him to evaluate his sense experiences are still developing and require copious guidance and assistance.

[30] He also presents the challenge that even though he is conscious that his thought processes such as his rationalization and imagining are voluntarily

determined by his will, which is weak, he still appears to recognize the qualitative difference between the automatic nature of his lower senses and those faculties that are solely under the control of his will and the desire to do better. However, on the totality of the record, it appears that this phenomenon of his awareness of the power of his will and a desire and a determination to develop and to strengthen its viability may well require intensive supervision within a highly structured environment to improve the nascent nature and strength of his will that could result in him volitionally exercising it to seek out and to determine which of his sense experiences are preferred and thus enabling him to choose to combine them into positive actions.

[31] Despite all these factors, there is no doubt that Mr. Bird currently represents a real and credible risk and a threat to the life, safety or mental well-being of others because of his repetitive, persistent aggressive behaviour and sexual misconduct. Thus, questions still remain. For example: Would less restrictive sanctions attain the same sentencing objective of the protection of the public, that more restrictive sanctions seek to attain? Is there a reasonable possibility of eventual control of the risk that he poses in the community? Put another way: Are the sentencing sanctions available

under the long term offender provisions sufficient to reduce his threat to an acceptable level?

[32] The total evidence discloses that the respondent may have tried hard; perhaps motivated to change but that he learns slowly. However, there are major Issues concerning his control in the community particularly if it were prescribed for him to receive medications. Consequently, there must be a necessary balancing of the public safety and his rehabilitation to the extent that he can, if at all, safely function as a fully integrated person in the community. However, when his past institutional plans are considered and on the total evidence, there is no doubt that should he be released into the community, Correctional Services Canada would have to commit ample resources in order to protect society.

[33] Also, when in custody, it would appear that when his resource person or case management team changed, his coping strategies faltered and he used drugs and acted out. Invariably, he would request supervision which would appear to be consistent with his understanding of his needs. Even so, based on his known risk, Correctional Services Canada did not appear to

have the flexibility to place him in a community correctional centre. Moreover, his basic skills when added to his limited intellectual ability, “a grade 2 level in school and unable to read,” made it frustrating for him to achieve. Thus, in this Court’s opinion, those concerns are still present, as it has been demonstrated, that when the respondent failed or should he fail there are disastrous consequences to the community.

[34] All the same, it has not been demonstrated satisfactorily that there is an impossibility of giving effect to long term supervisory conditions reasonably required to control the respondent’s risk in the community. Equally, however, no evidence of any available structured secured environment or resources was presented that satisfied the Court that the severity and nature of the respondent’s identified risks can reasonably be controlled in the community and be reduced to an acceptable level, so as to protect the public.

[35] The evidence is that he would require a structured environment on a twenty-four-hour basis and that he may not be a candidate for anti-androgen therapy as his sex drive may not be the primal factor for his sexual recidivism.

On this point, the evidence is that Correctional Services Canada does not have a half-way house or a group home or a community correctional centre structured with the potentiality or resource capable of dealing safely with the respondent's multidimensional needs within the community. Moreover, according to Dr. Theriault, any community correctional centre would have to be a highly structured forensic hospital. Furthermore, even with all the suggested strict controls, his pathology was such that he may still require clinical supervision after his completion of any long term supervision order.

[36] This Court does not accept, as intimated by the respondent's counsel, that the issue can be framed in terms of the respondent being defaulted into a dangerous offender category because there are no present resources that can address his violent and horrific criminogenic tendencies. Rather, in the Court's view, it is, if the respondent were to be released, whether there **is** a reasonable possibility of eventual control of the risk in the community. The Court considers this to be the true situation as the ***Criminal Code***, s.753.1(1)(c), by using the present tense "is" does not address a future possibility. See also: ***R.v. G.L.,*** [2007] O.J. No. 2935, 2007 ONCA 548, at paras. 58-59, ***R.v. C.P.S.***,[2006] S.J. No. 418, 2006 SKCA 78, para. 37.

[37] Further on the point and addressing the same issues of resources and community supervision as has been urged upon this Court, it is appropriate to adopt the words of Cronk J.A., in ***G.L.***, *supra.*, at paras. 62 and 63:

> 62 While I recognize that under s. 134.1(2) of the *Corrections and Conditional Release Act*, conditions of supervision may include those that are "reasonable and necessary in order to protect society," I do not believe that statute or the long-term offender regime is intended to virtually replicate jail-like conditions in the community for offenders released from custody. Where restrictive conditions of this type, like those proposed by the trial judge in this case, are necessary to control the risk of reoffending by an offender, and to thereby protect the public, the dangerous offender provisions of the *Code* are engaged. In other words, protection of the public is paramount.

> 63 Second, the issue of the impact of limited institutional resources on the criminal justice system has been considered by the courts in a number of contexts, most notably in connection with the constitutional rights enshrined in ss. 7 and 11(b) of the *Charter of Rights and Freedoms*. In that context, the Supreme Court of Canada has held that while account must be taken of the difficulties in securing full adequate funding, personnel and facilities for the administration of criminal justice, this consideration cannot be used to denude of meaning the rights protected under the *Charter*. See for example, *R. v. MacDougall*, [1998] 3 S.C.R. 45; *R. v. Morin* (1992), 71 C.C.C. (3d) 1 (S.C.C.); *Mills v. The Queen* (1986), 26 C.C.C. (3d) 481 (S.C.C.); and *Singh v. Canada (Minister of Employment and Immigration)*, [1985] 1 S.C.R. 177. Similarly, in my view, resourcing limitations cannot be used to render meaningless the long-term offender regime enacted by Parliament.

[38] Furthermore, when the Court considers contextually the respondent's previous criminal history of assault, and aggressive and violent sexual assaults, the predicate sexual assault offence is especially flagrant.

Significantly, the respondent was bound by a special peace bond imposed by court order that he breached in committing the present offences. The Court is also alive to the issue of the "burnout theory" as explored by the respondent's counsel but, concludes that the expert testimony was not clear on whether it would be applicable to the respondent as it also appears that the risk he presents would still be present at the end of any long term offender order.

[39] What is more, is that he has, in the past, sabotaged efforts to treat his antisocial behaviour and past programs and, as a result, psychological treatment were either inadequate or ineffective to control the risks that he presents. Critically, it does not appear that "medications would significantly reduce his risk of re-offence in the future." Although he appears to be crying out for help, it also appears that he too recognizes that his own safety and that of the public is best achieved with him in a structured and highly supervised setting.

Conclusions

[40] This was a difficult and immensely challenging case as it presented so many human variables, emotions and conditions. However, as the consequence of a dangerous offender versus a long term offender designation for the respondent was raised during the course of the hearing, it should be clear that this Court does not doubt that a dangerous offender designation in this case, would have profound consequences. Because of this factor, it has deliberated long and hard on the alternatives. As a result, it takes no issue on this point either way, and, all that it is prepared to say is that it must assume that, in either case, the statutory provisions applicable to release under appropriate community supervision would function as designed to protect the public safety.

[41] Consequently, this Court concludes and finds, from the evidence before it and that which has been conceded to by Defence counsel, that the Crown has met all the procedural requirements for the making of the application. Also, by virtue of his guilty pleas, the respondent has admitted that he has committed a “serious personal injury offence” under s.752 (a) as well as another “serious personal injury offence” under s.752 (b) and, as a result, there is no doubt that the Crown has met the burden of proof concerning

these preliminary issues.

[42] Likewise, although not admitted but conceded to by the respondent through his counsel, the Crown has met its burden of proof on the following factors and, accordingly, the Court finds that the respondent:

(a) constitutes a threat to the life, safety or physical or emotional well-being of other persons by evidence that established a pattern of repetitive behaviour as set out in s.753(1)(a)(i). See also: ***R.v. Langevin*** (1984), 11 C.C.C.(3d) 336 (Ont. C.A.),at p.347;

(b) has demonstrated a pattern of persistent aggressive behaviour, showing a substantial degree of indifference respecting the reasonable foreseeable consequences to other persons of his behaviour as set out in s. 753(1)(a)(ii). See also: ***R.v. Shrubsall***, [2001] N.S.J. No. 539, 2001 NSSC 197 (S.C.), at paras. 228 and 240;

(c) has committed the predicated offence of sexual assault with a weapon

that was of such a brutal nature as to compel the conclusion that his behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint as set out in s. 753(1)(a)(iii). See also: ***R.v. Antonius,*** [2000] B.C.J. No. 577, 2000 BCSC 429 (S.C.), at para. 25;

(d) has shown that he has failed, in sexual matters, to control his sexual impulses and there is a likelihood of him causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses set out in s. 753(1)(b). See also: ***R.v. Currie*** (1997), 115 C.C.C. (3d) 205 (S.C.C.).

[43] Furthermore, upon instructing itself on the principles and directions pronounced in ***Johnson***, supra., at paras. 21 to 40, it is this Court's opinion that, on the record before it, there also is evidence that the respondent:

(a) satisfies the "substantial risk" to re-offend criteria set out in s. 753.1(2)(a);

(b) has demonstrated a pattern of repetitive behaviour, of which the predicate offence of sexual assault with a weapon forms a part, that shows a likelihood of him causing death or injury to other persons or inflicting severe psychological damage on other persons as described in s. 753.1(2)(b)(i);

(c) has shown by his conduct in any sexual matters including the predicate offence of sexual assault with a weapon, a likelihood of causing injury, pain or other evil to other persons in the future through similar offences as described in s. 753.1(2)(b)(ii).

[44] This Court has also considered, as urged upon it by the respondent's counsel, and, as it is mandated to do, a long term offender designation. In addition, it has considered the principles of sentencing as set out in the ***Criminal Code***, ss.718-718.2 and, on the totality of the evidence, it concludes that a long term offender designation is not sufficient to protect the public from Mr. Bird's criminal and dangerous behaviour. Mr. Bird has not succeeded in controlling his sexual impulses and his prognosis to do so is poor; he has not succeeded in living independently; he requires twenty-four

hour supervision on an intensive basis and the expert testimony suggests this to be a life-long problem. What is more, there is no evidence that the resources are available to supervise his and similar placed long term offenders' safe reintegration into the community. Furthermore, it is clear, at this point, that if he is released from a highly structured and highly supervised setting he will hurt some innocent person as this is not so much a case of treatment but rather one of stringent community monitoring measures.

Disposition

[45] This Court has considered carefully the possibility of designating the respondent a long term offender with a determinate sentence and was impressed by the gallant submissions of his counsel in making the case for a long term offender designation. However, this Court, for the reasons stated, has rejected this option as too theoretical and speculative for the Court to find that there is a reasonable possibility of eventually controlling the respondent in the community. There may be a possibility, but on the total evidence presented, this Court cannot conclude that it is fairly characterized as reasonable as the respondent has demonstrated an inability to learn less

riskier behaviour. Thus, in all the circumstances, the overriding need to protect the public is paramount.

[46] Consequently, this Court is satisfied that the respondent meets the criteria of a dangerous offender. Further, on the above analysis and on an assessment of the total evidence, this Court concludes that it cannot, in all the circumstances of this case, make the lesser designation of a long term offender as there is no reasonable possibility of eventual control of Mr. Bird's risk in the community.

[47] As a result, under the authority of the ***Criminal Code,*** s.753(4), this Court finds and declares the respondent, William Junior Bird, a dangerous offender. As a result, this Court imposes a sentence of an indeterminate period in a penitentiary. Additionally, as the predicate offence of sexual assault with a weapon, is a "primary designated offence" under the ***Criminal Code,*** s.487.04, a DNA order is mandatory under the ***Criminal Code***, s. 487.051(1)(a), and the Court so orders. Likewise, this Court orders that under the ***Criminal Code***, s.109(3), he is prohibited, for life, from possessing any firearm, crossbow, restricted weapon, ammunition and explosive substance.

Sentenced accordingly.

J.