SUPREME COURT OF NOVA SCOTIA
Citation: *R v. J.B.*, 2023 NSSC 427

Date: 20231214
Docket: 515815
Registry: Sydney

Between:

His Majesty the King

and

J.B.

Defendant

Publication Ban: s. 486.4; 486.5 Criminal Code

Judge:	The Honourable Justice Patrick J. Murray
Heard:	November 28, 2023, in Sydney, Nova Scotia
Oral Decision:	December 14, 2023
Counsel:	Marc Njoh for the Crown Alison Aho for J.B.

Section 486.4 - 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or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 346 or 347,

(ii) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983, or

(iii) an offence under subsection 146(1) (sexual intercourse with a female under 14) or (2) (sexual intercourse with a female between 14 and 16) or section 151 (seduction of a female between 16 and 18), 153 (sexual intercourse with step-daughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

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

Mandatory order on application

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the complainant of the right to make an application for the order; and

(b) on application made by the complainant, the prosecutor or any such witness, make the order.

Child pornography

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

Limitation

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community.

Section 486.5 - 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.

Justice system participants

(2) On application of the prosecutor in respect of a justice system participant who is involved in proceedings in respect of an offence referred to in subsection (2.1), or on application of such a justice system participant, a judge or justice may make an order directing that any information that could identify the justice system participant 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:

Introduction

[1] On October 17, 2023, J.B. entered pleas of guilty to Counts 2, 3, and 4 of the Indictment dated July 6, 2022.

[2] The offences read that between January 1, 2017, and January 31, 2022, J.B.:

> Count #2: did for a sexual purpose invite E.D., a person under the age of sixteen years, to touch directly with her hands, the body of J.B. to wit: his private parts and or penis contrary to Section 152 of the *Criminal Code*.
>
> Count #3: did for a sexual purpose, touch the body of E.D., a young person with whom he was in a relationship of dependency by touching her directly with his hand and penis, contrary to Section 153(1) of the *Criminal Code*.
>
> Count #4: did make available sexually explicit materials to E.D., contrary to Section 171.1(1) of the *Criminal Code*.

Facts as Agreed

[3] E.D. is the […] of […]. E.D. was born on […]. Mr. B. was born on […].

[4] E.D. made disclosures to her mother, prompting […] to check E.D.'s computer (an iPad). This showed opened tabs on an internet browser depicting pornographic and explicit material. The internet's search history on E.D.'s iPad likewise contained explicit websites. The phrases "kid sex", "kids getting it porn sex", "child pornography and selfies", "what legally makes it child pornography", "kid getting it porn sex pics", among others, had been searched on E.D.'s iPad.

[5] On January 31, 2022, […] attended the […] RCMP Detachment with E.D., then […] years of age, to report the index offences to the RCMP. E.D. was subsequently interviewed by Cst. Jaquard of the RCMP and Mi'kmaq Family and Children's Services.

[6] The first incident of sexual touching occurred when E.D. was in grade primary and five years of age. J.B. was staying at […] residence. Mr. B.

subsequently encouraged E.D. to touch him in a sexual manner on numerous occasions over a five-year period.

[7] Specifically, Mr. B. asked E.D. to touch his bare penis with her hand while he was masturbating to pornography. Mr. B. would pull his pants down and have E.D. put her hands on his penis and ask her to move them around. Mr. B. rubbed his penis on E.D.'s leg. Mr. B. progressed to pulling down E.D.'s pants and touching E.D.'s vagina in a sexual manner with his hands. There was sexual contact both through clothing and skin to skin. There was no penetration of E.D.

[8] Mr. B. would show E.D. explicit pornographic material on his cellphone, both videos and pictures, of sexual acts between adults and between adults and children. Mr. B. would tell E.D. what he wanted her to do to him while watching this material. E.D. looked up things on her iPad that Mr. B. had done to her. She was aware of which terms to search for because she had seen them on Mr. B.'s phone during these incidents.

[9] E.D. is unsure exactly how many times this touching occurred, but the sexual incidents escalated in frequency between 2017 and 2022 and became an almost daily occurrence, whenever Mr. B. would have access to E.D. alone. At some point, E.D. told Mr. B. that she didn't like what Mr. B. was doing to her. After this, the frequency of incidents decreased to approximately once a week.

[10] Mr. B. told E.D. not to tell her mother, […], friends or teachers about the sexual touching. While Mr. B. did not openly threaten E.D., she felt afraid during these incidents.

[11] The last incident of sexual contact between Mr. B. and E.D. occurred approximately one month before E.D. disclosed the incidents to […].

Circumstances of the Offences

[12] The circumstances of the offences involve very serious criminal behaviour. The victim is a young child, the Accused's child. The circumstances giving rise to the offences occurred when E.D. made disclosures to her mother, prompting […] to check E.D.'s computer (an iPad). Thereafter […] attended the […] RCMP with E.D., and that eventually gave rise to the charges.

[13] Mr. B. was born in 1996, […] E.D. was born in 2011. These offences took place over a five-year period from 2017 to 2022 when E.D. was between the ages of 6 and 11. She was […] years of age when […] reported the matter.

[14] The agreed facts state that the Defendant would have the victim touch his bare penis with her hand while he masturbated to pornographic material. He would take down his pants and have her put her hands on his penis and move them around. He would also rub his penis on E.D.'s leg and things progressed to him undressing E.D. and touching her vagina with his hand.

[15] E.D. would be shown explicit material, pictures and videos on Mr. B.'s phone. These included sexual acts between adults and between adults and children. E.D. became aware of what terms to search for and looked up things on her iPad that her […] had done to her.

[16] These encounters became almost daily, and decreased only when E.D. herself told the Accused she did not like what he was doing, the last one occurring about a month before they were disclosed. They occurred when […] was away.

Circumstances of the Offender

[17] Mr. B. is a young man at age […]. He is well educated, having graduated with a Bachelor of Science in chemistry from […].

[18] Mr. B. has no criminal record, nor does he use drugs or alcohol. He comes from a good family. His mother and father are very supportive and well-respected members of the […] community.

[19] Mr. B. has a positive pre-sentence report. The family resided in […] until he was 13 years old, before moving to […]. Mr. B. reported that he was the subject of constant bullying, almost daily, while attending school there. He felt alone there, he said.

[20] He has an older […], and […], all of whom reside in […]. He shares a good relationship with them. They have never been involved with the Courts. He says there has been less contact with them since the charges of which they are all aware. Except for […], who, he said, remains supportive.

[21] Mr. B. said he had a great home life, stating it was only outside of the home that he experienced issues. Mr. B. was himself physically and sexually abused

beginning at the age of five until age 12. According to the pre-sentence report his life has changed for the better since moving to […].

Penalties Sexual Interference and Sexual Touching- ss. 151,152 CCC

[22] The offences of sexual exploitation and invitation to sexual touching with persons under the age of 16 years each carry a maximum sentence of 14 years' imprisonment and a minimum sentence of one (1) year if the Crown proceeds by indictment, which is the case here.

[23] When a court imposes a sentence for an offence that involved the abuse of a person under the age of 18 years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

[24] With respect to sentencing for sexual offences against children, upward departure from prior precedents and sentencing ranges may be required to impose a proportionate sentence; sexual offences against children should generally be punished more severely than sexual offences against adults.

[25] The courts must take the wrongfulness and harmfulness of sexual violence against children into account when determining the offender's degree of responsibility. There is no requirement for rare or special circumstances in order to impose a substantial sentence where such a sentence is appropriate.

Principles of Sentencing

[26] In ***R v. W.C.C.***, 2023 NSSC 85, Justice Keith recently summarized the general principles of sentencing. Crown and Defence agree on the applicable sentencing principles. They do not agree on how the parity principle should be applied in this case:

> [34] A fit and proper sentence is necessarily contextualized and individualized. Among other things, each offence involves a unique accused and unique surrounding circumstances.
>
> [35] The analysis is informed by section 718 of the *Criminal Code* which confirms that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing "just sanctions".
>
> [36] Section 718 further confirms that this purpose is achieved by imposing a "just sanction" that has one or more of the following objectives:

1. Denunciation (section 718(a));
2. Deterrence (section 718(b));
3. Separating offenders from society (section 718(c));
4. Rehabilitation (section 718(d));
5. Reparations to the victim or community (section 718(e)); and
6. Promoting accountability and the need to accept responsibility for harms done to victims and society (section 718(f)).

[37] Sections 718.1 and 781. 2 of the *Criminal Code* provide principles which the Court must apply or consider to ensure the fundamental purpose and related objectives of sentencing are realized. In particular:

1. Section 718.1 codifies the principle of proportionality or, more specifically, that: "[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender";

2. Section 718.2 lists the following additional principles that must be applied to reach a just sentence. For the purposes of this hearing, the following particular provisions are germane:

a. Section 718.2(a): Aggravating or mitigating circumstances relating to the offence or the offender (section 718.2(a)) [1];

b. Section 718.2(b) of the *Code* speaks to parity and the notion that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances." The principle of parity differs from that of proportionality, mentioned above. Proportionality demands that a just sentence reflect the unique, particular circumstances of the offender and the offence. By contrast, a sentencing regime that is just and fair strives for parity so that similar sentences are imposed in similar situations. To achieve parity, the Court looks beyond the single case before it and searches for appropriate comparisons in the jurisprudence. In doing so, the Court not only achieves parity but invokes the collective wisdom of other judges facing similar issues. These 2 principles (proportionality and parity) do not work at cross-purposes. On the contrary, they work in tandem towards a just and proportionate sentence. Thus, in *Friesen*, the Supreme Court of Canada wrote: "Parity is an expression of proportionality. A consistent application of proportionality will lead to parity. Conversely, an approach that assigns the same sentence to unlike cases can achieve neither parity nor proportionality" (at paragraph 32).

[38] As indicated, in cases involving sexual abuse of children, the Supreme Court of Canada has confirmed that "Protecting children from wrongful exploitation and harm is

the overarching objective of the legislative scheme of sexual offences against children in the *Criminal Code*. Our society is committed to protecting children and ensuring their rights and interests are respected.....Protecting children from becoming victims of sexual offences is thus vital in a free and democratic society." (*Friesen*, at paragraph 42)

[39] *Friesen* repeatedly emphasizes that denunciation and deterrence (sections 718(a) and (b) of the *Criminal Code*) are the key priorities; and it ultimately concluded that "Parliament has determined that sexual violence against children should be punished more severely" (at paragraph 116). As such, "upward departure from prior precedents and sentencing ranges may well be required to impose a proportionate sentence" and "sexual offences against children should generally be punished more severely than sexual offences against adults" (at paragraph 107). In these circumstances, the Supreme Court of Canada concluded, custodial sentences in the mid-single digits or higher are "normal" (at paragraph 114).

[40] At the same time, *Friesen* recognized that the intergenerational trauma suffered by Indigenous persons may manifest itself in the experiences and actions and a convicted indigenous offender and may diminish the moral culpability of an indigenous offender. At paragraph 92 of *Friesen*, the Court wrote:

> Likewise, where the person before the court is Indigenous, courts must apply the principles from *R. v. Gladue*, [1999] 1 S.C.R. 688 (S.CC), and *Ipeelee*. The sentencing judge must apply these principles even in extremely grave cases of sexual violence against children (see *Ipeelee*, at paras. 84-86). The systemic and background factors that have played a role in bringing the Indigenous person before the court may have a mitigating effect on moral blameworthiness (para. 73). Similarly, a different or alternative sanction might be more effective in achieving sentencing objectives in a particular Indigenous community (para. 74).

[41] As a result, the Court further concluded that:

> the sentencing judge retains discretion to accord significant weight to other factors (including rehabilitation and *Gladue* factors) in exercising discretion in arriving at a fit sentence, in accordance with the overall principle of proportionality. (at paragraph 104)

Positions of Crown and Defence

[27] In their brief, the Defence has submitted this is a case where ***Gladue*** factors, ***R. v. Gladue***, [1999] 1 S.C.R. 688 (S.CC), justify a reduced custodial sentence.

[28] Perhaps most significantly, the Defence says, is Mr. B.'s own experience as a sexual assault survivor. They say these experiences, as described in Mr. B.'s

brief (at paragraph 50) had a major impact on him and contributed to him having an addiction to pornography.

[29] Mr. B. refers to caselaw where it has been held that a potential long-term effect of child abuse is that children who have been abused themselves may be more prone to engage in sexual violence as adults. (See ***R v. Friesen***, 2020 SCC 9, at paragraph 81; ***R v. Woodward***, 2011 OnCA 610 at paragraph 72; and ***R v. D.(D.)***, 2002 CarswellOnt 881 at paragraphs 37 – 38)

[30] The Crown submits that ***Gladue*** does not override other sentencing principles, and is not separate from them, but is to be considered together with all of the other relevant sentencing principles. As such, the Crown states that reliance on ***Friesen***, in cases involving sexual offences against children, is appropriate in achieving an individual and just sentence. ***Friesen*** incorporated the ***Gladue*** principles in the discussion at paragraphs 92, 104, and 124 in particular.

[31] From this, it can be seen that while there are strong aggravating factors there are also factors which may mitigate against imposing an unduly lengthy term of imprisonment. The Court acknowledges that while certain sentencing principles may take precedence, rehabilitative aspects that apply to an individual cannot and should not be ignored. Much depends on the individual aspects of each case making it an individual process.

[32] Crown and Defence have made sentencing submissions with respect to the several factors cited in ***Friesen*** that a court may consider in determining a fit and proper sentence for sexual offences against children. The Court noted these are neither a checklist nor an exhaustive set of factors.

[33] In this case, Mr. B. is an indigenous man, and as such s. 718.2(e) applies. In addition, s.718.04 applies to the victim as a vulnerable person and indigenous female.

(1) Likelihood to Re-offend

[34] The Court has the benefit of a Forensic Sexual Behavioural Assessment completed for the purpose of sentencing. This is dated June 28, 2023, and concludes that overall, Mr. B.'s baseline risk is approximately equal to that of the average person who is assessed for "crossing legal sexual boundaries".

[35] The report recommends that considering Mr. B.'s "average risk for sexual re-offence", it is recommended he attend, participate in and complete specialized treatment for persons who have committed a sexual offence at the recommended level.

[36] The Crown submits the report confirms that several criminogenic factors remain in Mr. B.'s life. The Crown says that without intervention these factors pose a risk to the public, and a basis for a s. 161 order, as being reasonable.

[37] The Defence submits there are positive features to the Forensic Report, in that the FSBP program in Sydney appears to be a good fit for his risk level.

[38] The Defence submits there is no indication in the report that Mr. B. is likely to re-offend.

(2) Abuse of position or Trust and Authority

[39] It is not disputed between the Crown and Defence, that in committing these offences Mr. B. abused his position of trust and authority.

[40] The Defence acknowledges this is an aggravating factor and that it constitutes a breach of trust, because a child is entitled to have that trust honoured.

[41] The Crown submits this is a significant aggravating factor, referring to comments in ***Friesen***, that persons who abuse a position of trust to exploit vulnerable children are especially blameworthy.

(3) Duration and Frequency

[42] It is undisputed that these offences occurred on numerous occasions over a five-year period. During that time, they escalated to "almost daily" occurrences.

[43] Once again, the Defence acknowledges the aggravating nature of the offences. The Crown speaks in much stronger terms, pointing to the immediate harm the victim experiences as a result of multiple assaults.

(4) Age of the Victim

[44] The Defence acknowledges that the victim was between the ages of 5 and 10 when the abuse occurred, pointing out that s. 718.04 makes the victim who is also […], inherently vulnerable.

[45] The Crown submits that the particularly young age of E.D. made her more vulnerable to sexual violence, and this factor increases the degree of Mr. B.'s responsibility and the gravity of the offence.

[46] The Crown says that children who are victimized at a young age must endure the consequential harm for a longer period of time, as noted in ***Friesen*** at paragraph 134.

[47] Referring to ***R v. Ipeelee***, 2012 SCC 13, the Court in ***Friesen***, said the sentencing judge must apply the ***Gladue*** principles "even in extremely grave cases of sexual violence against children". This results from systemic background factors that have played a role in bringing the person, in this case Mr. B., before the Court and may have a mitigating effect on his moral blameworthiness.

(5) Degree of Physical Interference

[48] As noted by Justice Keith in ***R v. W.C.C.***, 2023 NSSC 85, this factor is intended to reflect the degree of violation of the victim's bodily integrity.

[49] The Defence points out that there was no penetration in this case, and no bodily injury. I have already discussed the harm that flows to children that are subjected to sexual violence. Courts must consider the reasonably foreseeable potential harm that flows from sexual violence against children. (***Friesen***)

(6) Victim Participation

[50] This is not a relevant consideration in this case.

[51] The Crown, in its brief, submits that the Court should consider s. 718.04 of the Criminal Code, in that it requires denunciation and deterrence to be the primary considerations for offences involving abuse of a vulnerable person, and specifically when the person is aboriginal and female.

[52] The pre-sentence report and the ***Gladue*** report indicate that Mr. B. is a registered band member of the […] Community and was raised there and in the community of […].

[53] In ***R v. Kownirk***, 2023 NUCA 2, the court discussed the interaction between sections 718.04 and 718.2(e) as follows:

> [59] Section 718.04 of the *Criminal Code* provides:
>
> When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances — including because the person is Aboriginal and female — the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.
>
> Section 718.2(e) of the *Criminal Code* provides:
>
> A court that imposes a sentence shall also take into consideration the following principles:
>
> . . .
>
> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.
>
> Both these provisions are designed to promote recognition of the harms caused to Canada's Indigenous peoples by colonialism.
>
> [60] As the Crown notes in its factum, however, "they serve different social objectives, with s. 718.04 addressing the over representation of violence against Indigenous women and girls, and with s. 718(2)(e) addressing the over-incarceration of Indigenous offenders."

Decision

[54] These offences constitute abhorrent acts inflicted on a young child by […] over a period of years, her formative years.

[55] They amount to an egregious breach of trust of the relationship between them, one in which she was totally dependant on him maintaining that trust, and one in which she was totally vulnerable to his desire for gratification.

[56] In this particular case, there has been exposure to explicit sexual material to the victim by […], the facts having indicated that she became aware of how to search for and find these websites.

[57] The circumstances before the Court also show that Mr. B. was a victim of sexual abuse when he was a child and of similar age to that of […] here.

[58] While this is a relevant factor in terms of his background, it is Mr. B. alone that is the offender and E.D. who is the victim in this case.

[59] Denunciation and deterrence loom large as the principles to be emphasized. As in any case, the circumstances of the offender must also be taken into account in rendering a fit and proper sentence upon Mr. B.

[60] The Crown submits that a period of custody of four (4) years is an appropriate sentence in addition to the ancillary orders sought. In making this recommendation the Crown says this includes the circumstances of both the offences and the offender, stating it is based on the principles of sentencing, and the guidance provided by the caselaw. In particular, the Crown says the recommended sentence includes the principle of totality.

[61] The Defence recommends a period of custody of two (2) years and is in agreement with the ancillary orders being granted with the exception of two conditions in the s.161 order. These will it says, make it difficult for Mr. B. to reintegrate himself back into the […] community, as part of his rehabilitation.

[62] The Defence cautions the Court that the majority of the cases provided by the Crown have not considered the impact of such cases as ***Gladue*** and ***Ipeelee***, with the exception of ***R v. W.C.C.*** The Defendant's brief states:

> 19. Therefore, the challenge that is before this Honourable Court is in determining how to reconcile the aggravating nature of this offence as *Friesen* emphasizes, and the reduced moral culpability of Mr. B. as an […] man who has suffered because of the intergenerational impact of colonization and the Indian Residential School ("IRS") System.

[63] I concur with the Defence that this is the main issue. What I attempted to explain in ***R v. CDC***, 2021 NSSC 287, is that the overriding principle remains the fundamental principle that sentences must be proportionate to the gravity of the offence and the degree of moral responsibility of the offender. As stated in ***R v. Swampy***, 2017 ABCA 134, a central purpose of a ***Gladue*** analysis is to achieve proportionality.

[64] The Defence referenced the decisions of the Nova Scotia Provincial Court in ***R v. Syliboy***, 2018 NSPC 83, (and ***R v. Robinson***, 2020 NSPC 1). In ***Syliboy,*** Judge Sakalauskas stated:

> Gladue factors are not an after the fact consideration in sentencing, adjusting the sentence that would have been imposed in their absence. Like all other sentencing principles, they are integral to the process of arriving at the sentence in the first place…

[65] To that end, the Crown in its brief included a discussion of ***Gladue***, referring to Mr. B. as being a member of both First Nation Communities and noting that a ***Gladue*** analysis involves the Court considering the systemic and background factors affecting Indigenous people and their impact on a particular offender and their culpability.

[66] The Crown notes there are factors that may have played a role in Mr. B. being before the Courts and that his family's circumstances bear the hallmarks of intergenerational harm and trauma. In Mr. B.'s case, all four of his grandparents attended residential schools and both of his parents attended Indian day school.

[67] In addition, Mr. B. has experienced mental health challenges, as well as significant childhood sexual abuse. Referring to ***Ipeelee*** the Crown says this background provides context for Mr. B.'s offending and mitigates his moral culpability.

[68] In ***W.C.C.***, Justice Keith found, in the circumstances of that case, that the ***Gladue*** factors provided a "uniquely compelling case for a reduced sentence". In their brief, the Defence argues this is a compelling case for a reduced custodial sentence.

[69] The ***Gladue*** report sets out that both communities in which Mr. B. was raised have been historically disadvantaged. The Defence says the tragedies and obstacles have become normalized to the point where some individuals such as Mr. B., do not recognize them as such. Nonetheless, the law says they are a consideration in the sentencing process.

[70] Turning to other factors that are relevant in this sentencing, Mr. B. is still a young man. He has expressed remorse in Court for the wrongs he committed. He has taken responsibility for his actions by pleading guilty and avoiding the necessity of a trial. These do not excuse the severity of the crimes, but they are

significant mitigating factors. At the time of the offences Mr. B. was youthful in age, […], but still an adult.

[71] As mentioned, he has no criminal record, with good prospects for employment and academic learning. He is also willing to engage in counselling to address underlying issues related to these offences.

[72] Mr. B. to his credit has been the subject of very restrictive release conditions since February 1, 2022, that included a 7:00 p.m. to a 7:00 a.m. curfew and not being able to reside in his community. This has been a period of almost two years that he has complied with these conditions. This shows good prospects for Mr. B. rehabilitating himself, which he has expressed a desire to do.

[73] Considering the circumstances, the aggravating and mitigating factors, the principles of sentencing and Mr. B.'s background, I find a fit and proper sentence to be 40 months incarceration. The Crown recommendation was justified, but I find this sentence best reflects his moral culpability in these circumstances.

[74] It would be my direction that Mr. B. undertake the treatment recommended in the Forensic Assessment Report or such similar treatment as can be offered to him while in custody.

[75] The Ancillary Orders sought by the Crown are granted subject to an amendment to the third paragraph under the s. 161 Prohibition Order, which will read, "person or persons whom the Court considers appropriate". This will allow for other persons whom the Court considers appropriate to assist in the supervision. With respect to the other changes sought by the Defence, I have opted to ensure the community is protected, but would note that s. 161(3) of the *Criminal Code* allows for an application to vary the terms and conditions of the order.

[76] I would like to thank Counsel for their excellent briefs and submissions.

Murray, J.