

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

COLE ALLAN GRIFFIN

Transcript of the Reasons for Sentence delivered by The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 20th day of September, A.D. 2013.

APPEARANCES:

Mr. B. Demone and
Ms. M. Zimmer:

Counsel for the Crown

Mr. T. Boyd:

Counsel for the Accused

(Charge under s. 271 of the Criminal Code of Canada)

BAN ON PUBLICATION OF THE COMPLAINANT/WITNESS
PURSUANT TO SECTION 486.4 OF THE CRIMINAL CODE

BAN ON PUBLICATION PURSUANT TO SECTION 648 OF
THE CRIMINAL CODE

1 THE COURT: This afternoon, it is my
2 responsibility to decide what sentence should be
3 imposed on Cole Griffin for having sexual
4 assaulted C.C. some seven years ago. Mr. Griffin
5 had his trial on this charge this past July, and,
6 after two days of deliberations, the jury found
7 him guilty. His sentencing hearing was adjourned
8 to this week so that a pre-sentence report could
9 be prepared.

10 In any sentencing, the Court has to take
11 into account the principles of sentencing that
12 are set out in the Criminal Code, the
13 circumstances of the offence that was committed,
14 and the circumstances of the person that has
15 committed that offence.

16 As far as the circumstances of the offence,
17 the Crown and Defence do not agree on the basis
18 upon which Mr. Griffin should be sentenced. So
19 that is the first question that I have to
20 address.

21 This was a jury trial. For the purposes of
22 deciding whether Mr. Griffin was guilty or not
23 guilty, the jury was the sole trier of facts.
24 The jury found Mr. Griffin guilty, so it is clear
25 that they were satisfied beyond a reasonable
26 doubt that he sexually assaulted C. But in our
27 system of law, juries are asked to give a

1 verdict. They are not asked, and, in fact, they
2 are not permitted, to give reasons for that
3 verdict. The entire deliberation process is
4 subject to strict rules whereas jurors are not
5 permitted to disclose anything about it. That
6 rule is there for a very good reason, but it
7 means that sometimes, because of how the evidence
8 has come out during the trial, there can be some
9 uncertainty, possible ambiguity, about what
10 factual findings a jury made to arrive at its
11 verdict. Other times it is clear that there is
12 only one way the jury could have reached its
13 verdict, and, in those cases, that is what the
14 sentencing judge has to use for the factual basis
15 for the sentencing. But this is one case where I
16 agree that there can be some uncertainty as to
17 what the factual basis for the conviction is.

18 Mr. Griffin faced a sexual assault charge
19 alleged to have involved events over a period of
20 several months. C. herself described various
21 acts of sexual assault that took place during
22 that period of time. The jury was told, as they
23 always are, that the jury could accept all, some,
24 or none of the evidence of any of the witnesses
25 called. So it is possible that they could have
26 returned a verdict of guilty based on some of the
27 things that C. said happened, that they may not

1 have been completely sure about some of the other
2 things she said happened.

3 In addition to that, Mr. Griffin gave a
4 statement to the police during this
5 investigation, and, in that statement, he
6 admitted to certain acts that would constitute a
7 sexual assault. That statement was ruled
8 admissible at the trial and was part of the
9 evidence that the jury had to consider. So it is
10 possible that they could have found him guilty on
11 the basis of one or more of the admissions that
12 he made in that statement, and not necessarily
13 because they accepted C.'s evidence. So given
14 this, I, as the trial judge, am the one who has
15 to decide what acts of sexual assault were proven
16 beyond a reasonable doubt and what acts should
17 form the basis for the sentencing.

18 I am not going to go over all of the
19 evidence in detail. I will simply note the main
20 features of the aspects of the evidence that
21 dealt specifically with the nature of the sexual
22 touching that was said to have taken place.

23 First, with respect to C.'s evidence, there
24 were really two aspects of things that she talked
25 about when describing being sexually assaulted by
26 Mr. Griffin. The first aspect was her
27 description of an incident that she recalled

1 happened on a very specific night, a night where
2 she slept in the same bed as Mr. Griffin. The
3 second aspect of her evidence was the description
4 of assaults that occurred over a period of time
5 when he would tuck her into bed at night.

6 With respect to the first incident, her
7 evidence was that she woke up to Mr. Griffin's
8 hands under her pajamas and underwear touching
9 her genital area. She said that his hand was
10 moving up and down in that area, that she laid
11 there for five or ten minutes because she did not
12 know what to do, that she eventually got up, went
13 to the bathroom and then went downstairs to watch
14 television. And she said she was about seven
15 years old when this happened. With respect to
16 the other incidents, she explained that
17 Mr. Griffin would tuck her into bed and that part
18 of his bedtime ritual was that he would tickle
19 her on her belly, blow air on her skin (this was
20 referred to as "blowing bubbles") and give her
21 goose bumps. This appeared to have been, at
22 first at least, a playful thing that happened as
23 part of the bedtime ritual, something that made
24 her laugh and was fun. But she describes things
25 taking on a very different turn also. She
26 explained that sometimes he would lower her
27 pajamas and underwear down to her hips, that he

1 would "blow bubbles" and kiss and lick her belly,
2 that he would move lower on her body towards her
3 genital area and kiss her genital area. She said
4 he did not spend a lot of time in that area but
5 would do these things as he was moving his head
6 up and down along her body, and she explained
7 that this happened on a number of occasions.
8 Those are the actions that C.C. described.

9 Mr. Griffin testified at his trial. Some of
10 his evidence dovetailed with C.'s. For example,
11 he, too, remembered the night where they spent
12 the night in the same bed and his evidence was
13 consistent with hers as to how this came about,
14 but he denied touching her sexually that night.
15 He also agreed with a lot of what she said about
16 the bedtime routine, but denied touching her in a
17 sexual way when he would tuck her in. On his
18 evidence, none of the contact that took place
19 would constitute a sexual assault, and I gave
20 instructions to the jury to that effect in my
21 charge. I told the jury that if they believed
22 him or if his evidence left them with a
23 reasonable doubt, they would have to find him not
24 guilty because, on that version of events, he did
25 not commit a crime.

26 It is obvious from the length of the
27 deliberations and some of the questions and

1 read-backs that the jury requested that they
2 carefully considered this and the rest of the
3 evidence. It's equally clear from their verdict
4 that they rejected Mr. Griffin's trial evidence.

5 The last evidentiary piece is Mr. Griffin's
6 statement to the police. In his statement to
7 Constable Foley, Mr. Griffin initially denied
8 that he ever touched C. in a sexual manner, but
9 as the statement progressed, he eventually made
10 certain admissions about having touched her in a
11 sexual way, although those admissions do not
12 dovetail exactly with what she described in her
13 trial testimony. He admitted to doing some
14 things, but he admitted to less than what she
15 described at trial. Again, the jury was
16 instructed that it was for them to decide how
17 much weight to attribute to Mr. Griffin's
18 statement.

19 As I have already explained, the jury could
20 have found Mr. Griffin guilty without necessarily
21 accepting that he did all of the things that C.
22 alleged. For example, they could have accepted
23 what she said about waking up to his hand under
24 her pajamas but not what she said about the
25 things she said happened as he was tucking her
26 in, or, in the reverse, they could have accepted
27 what she said about what he did when he was

1 tucking her in but not been sure that he
2 deliberately put his hand on her genitals that
3 time they spent the night in the same bed, or
4 they could have not accepted her evidence but
5 found him guilty on the basis of his own
6 admissions. There are many permutations and
7 combinations possible.

8 The defence is asking me to sentence
9 Mr. Griffin on the basis of the least serious
10 scenario available on the evidence. To do so, I
11 would have to conclude that the more serious
12 aspects of what C. alleged - the touching of her
13 genitals by Mr. Griffin with his hand on one
14 occasion and with his mouth on a number of
15 occasions - have not been established beyond a
16 reasonable doubt at this trial. The Crown is
17 asking me to conclude that those serious
18 allegations have been proven to the requisite
19 degree and that it is on that basis that
20 Mr. Griffin should be sentenced.

21 I have considered this and I have absolutely
22 no hesitation in accepting C.'s testimony about
23 what happened to her, and this for many reasons.
24 In my opinion, she gave clear and convincing
25 evidence about what happened to her. She
26 underwent very thorough and very competent
27 cross-examination and was never shaken in any way

1 on the details that she gave about what happened
2 to her. She struggled at times during her
3 evidence, but she stood very firm on what
4 happened to her. I observed her carefully as she
5 testified. Demeanour is always something that
6 must be approached with great care. But the
7 moments when she broke down during her evidence,
8 the way she responded to suggestions that somehow
9 she might have misconstrued or been confused
10 about what happened to her, and everything else
11 about the manner in which she delivered her
12 evidence was, in my opinion, very compelling. I
13 am satisfied beyond a reasonable doubt that the
14 assaults that she was subjected to by Mr. Griffin
15 were as she described them and not the somewhat
16 watered-down version that Mr. Griffin eventually
17 admitted to Constable Foley. To the extent that
18 Mr. Griffin's statement to the police suggests a
19 less serious interference with C., it does not
20 raise a reasonable doubt in my mind about her
21 allegation.

22 I understand why the jury rejected
23 Mr. Griffin's testimony at trial. In my view,
24 that was a sound conclusion given the nature of
25 that evidence, the many inconsistencies within it
26 and between it and the various things he said in
27 his statement to Constable Foley. There were

1 also inconsistencies within his statement to
2 Constable Foley. And as for some of these
3 differences between the statement and his trial
4 evidence, some of the explanations that he gave,
5 to my mind at least, were simply unbelievable.
6 Even though he eventually did make some
7 admissions to Constable Foley, those admissions
8 do not raise a doubt in my mind as to the
9 accuracy of C.'s description of what actually
10 happened, and wherever there is a difference
11 between the two, I accept what C. said as an
12 accurate account of what happened.

13 It is clear from the pre-sentence report
14 that Mr. Griffin continues to maintain his
15 innocence and perhaps he has convinced himself
16 that he did not do the things that C. described.
17 I cannot know. But I am satisfied that her
18 account of events is credible, reliable, and
19 accurate as far as how serious these sexual
20 assaults were.

21 So to be clear, for the purposes of
22 sentencing today, the facts that I am basing my
23 decision on are the following: Mr. Griffin
24 became involved in a relationship with C.'s
25 mother when C. was very young. He took on a
26 parental role in the family and was a father
27 figure to C. She liked him a lot and they got

1 along very well and did a lot of things together.
2 Mr. Griffin often looked after her and her
3 siblings from time to time as their mother was
4 involved in shift work and her schedule varied.
5 One night, C. and Mr. Griffin spent the night in
6 the same bed. This was at the suggestion of C.'s
7 mother who thought it would give them and
8 opportunity to bond.

9 Here, I have to pause, given some of the
10 submissions that were made at trial and at the
11 sentencing hearing about this aspect of the
12 facts, this question of how C. and Mr. Griffin
13 came to spend a night in the same bed. Many may
14 view the idea of having Mr. Griffin and C. sleep
15 in the same bed as not a good idea, something not
16 appropriate. But that is not what this case is
17 about and it has, in my view, very little
18 relevance to sentencing. This case is not about
19 C.'s mother, the choices that she made, her
20 parenting skills, or other decisions she made
21 during the course of that time frame. This case
22 is about Mr. Griffin's actions.

23 I recognize that everything must be looked
24 at in context and sometimes with the necessary
25 nuances, but no amount of context or nuance can
26 shift the responsibility away from Mr. Griffin
27 himself for his actions in having sexually

1 assaulted this little girl. The reasons he ended
2 up sleeping in the same bed as her do not reduce
3 his blameworthiness for having taken advantage of
4 the situation. I think that aspect of the
5 evidence is relevant only to one extent: Because
6 this was not his idea, it cannot be argued that
7 he planned this all along. If he had, obviously
8 it would make it all the more serious. Here,
9 there is nothing to suggest that these sleeping
10 arrangements were his idea or his suggestion, but
11 beyond that, I do not find that fact particularly
12 relevant.

13 Going back to the facts that the sentence
14 should be based on, on that occasion, when
15 Mr. Griffin was sleeping in the same bed as C., I
16 find that he did put his hand under her pajamas
17 and underwear and touched her on her genital
18 area. He moved his hand up and down and at one
19 point she woke up. She waited because,
20 understandably, she did not know what to do.
21 Eventually, she got up and went to the bathroom
22 and went downstairs to watch TV. She said she
23 thought she was seven when this happened. She
24 may have the exact year wrong depending on how
25 one looks at the evidence and given the time
26 frame on the Indictment, but it really does not
27 matter. The fact is she was still quite young.

1 The other sexual assaults took place when
2 Mr. Griffin was tucking her into bed. He would
3 tickle her on her stomach and move down towards
4 her pelvis and her genital area, blow on her
5 stomach and try to give her goose bumps. He did
6 lick her stomach and he did eventually move
7 closer to her pelvic and genital region and he
8 did have his mouth on her genital area. He said
9 this, too, would go on for three or five minutes,
10 that he did not spend a lot of time on her
11 genital area but would basically move his face up
12 and down in that general area of her body. She
13 did not say how many times this happened or over
14 exactly what period of time, but I infer, and I
15 think it is clear from her evidence, that it
16 happened several times until eventually she got
17 older and decided she did not want to get tucked
18 in anymore.

19 Those are my factual findings as to the
20 circumstances of the offences committed by
21 Mr. Griffin.

22 Turning to his personal circumstances, he is
23 now 27 years old. He was in his early 20s when
24 these offences were committed, and he was only 19
25 when he began his relationship with C.'s mother,
26 who is much older than him.

27 I have reviewed the pre-sentence report

1 carefully. It sets out some of the challenges
2 and struggles that Mr. Griffin faced when he was
3 growing up. His was not an easy upbringing and I
4 recognize that.

5 There are a few areas in the report where
6 Mr. Griffin's accounts or perceptions do not
7 appear to be entirely in line with the perception
8 of others. For example, he says he was the
9 subject of physical abuse at the hands of his
10 father. He made reference to that in the
11 statement to the police also, I think. The
12 father denies that in the pre-sentence report and
13 I have no way of knowing where the truth is on
14 that front. There is also some mention in the
15 report about a misunderstanding of sorts within
16 the family about an incident that happened
17 between Mr. Griffin and his sister and
18 circumstances that led to him being sent away to
19 Bosco Homes. The reason why he was sent to Bosco
20 Homes seems to not be understood exactly the same
21 way by him and by his parents, at least according
22 to what is in the report. I cannot draw any
23 conclusions from all this, but I just note that
24 it may be an indication of other examples where
25 Mr. Griffin's way of perceiving events may not
26 necessarily accord with the perception of others.

27 What is positive for him is that despite

1 some of the problems that occurred over the
2 years, he still has the support of his father and
3 stepmother, and hopefully this will be of
4 assistance to him in reintegrating society when
5 the time comes.

6 I also heard from his counsel and also in
7 the report that he had, at the time of the trial,
8 reached a point where he was more clear and
9 consistent about what he wanted to pursue as far
10 as work opportunities and more generally give a
11 direction to his life.

12 Mr. Griffin has no criminal record. This
13 will be his first conviction. It is to his
14 credit that despite some of the difficulties he
15 had growing up and despite having spent a few
16 years living on the streets in Yellowknife as a
17 young man, not even an adult, he managed to stay
18 out of trouble with the law. It is also to his
19 credit that he had, at least recently, come to
20 some decisions and a clearer sense of direction
21 about what he wanted to do with his life and the
22 employment opportunities and training he wanted
23 to pursue. When he was given an opportunity to
24 speak earlier this week, he said he wanted to
25 move in a more positive and healthy direction
26 with his life. He is still quite young, and no
27 matter what I do today, the fact is he will still

1 be a young man when he will regain his freedom.
2 And there are things in the pre-sentence report,
3 including the support that he has, that give some
4 cause for optimism.

5 Of course, from the Court's perspective, one
6 area of concern is his refusal to acknowledge the
7 wrong that he did. Maybe his relationship with
8 C.'s mother was unhealthy and dysfunctional,
9 maybe in some respects he tried to do his best
10 when he became part of that family unit. It
11 seems clear that in some respects he did do his
12 best to contribute and maybe he was in way over
13 his head; but one day he will have to come to
14 terms with the fact that none of that changes or
15 explains his conduct towards a girl C.'s age and
16 how he abused the trust that she had placed in
17 him.

18 The Court is concerned for him and for the
19 future in that regard, and the Court hopes that
20 during his sentence and after his release, he
21 will benefit from assistance in gaining more
22 insight into his actions and the root causes of
23 those actions. This for the protection of other
24 young people he may come into contact with, of
25 course, but also for his own wellbeing, because
26 suffice it to say that if Mr. Griffin ever finds
27 himself convicted for a crime of this nature

1 again, his prospects will be very grim and he
2 would likely face a sentence of imprisonment far,
3 far more significant than anything he can be
4 facing today, coming before the Court as a first
5 offender.

6 The pre-sentence report makes mention of the
7 fact that Mr. Griffin is of Metis descent. I did
8 not hear any specific submissions on that and the
9 implications it has, given the provisions of the
10 Criminal Code that mandate a different approach
11 when dealing with aboriginal offenders. I have
12 given that issue some consideration. I have
13 already noted that Mr. Griffin faced difficult
14 situations as he was growing up. But, on the
15 whole, this is not a case where those are factors
16 that can make a significant difference on the
17 ultimate sentence that I impose given the
18 seriousness of this crime and the overall
19 circumstances.

20 So, in general, and I say it again, in
21 arriving at my decision, I have taken into
22 account everything that I have heard about
23 Mr. Griffin's personal circumstances.

24 Now I must turn to the law. I have
25 considered the principles of sentencing that are
26 set out in the Criminal Code. I will not be
27 referring to all of them in detail except to say

1 that the fundamental sentencing principle is that
2 a sentence must be proportionate to the
3 seriousness of the offence and the level of
4 blameworthiness of the offender. This is a
5 serious offence and Mr. Griffin's degree of
6 blameworthiness for it is very high. It has long
7 been established that the paramount sentencing
8 principles when dealing with sexual abuse of
9 children are denunciation and deterrence. Courts
10 have to impose sentences that make it clear that
11 in our society the abuse of children is
12 intolerable. Courts have to ensure that their
13 sentences discourage those who might be inclined
14 to take advantage of children in this way.

15 In the area of sexual abuse of children by
16 persons who are in a parental position, such as
17 is the case here, the case law has developed more
18 specific principles. The cases filed by the
19 Crown and the case filed by defence refer to some
20 of those principles and to the sentencing ranges
21 and approaches that have been developed as a
22 result.

23 The law is clearly established in this
24 jurisdiction that the starting point for a single
25 act of major sexual assault against a child by a
26 person who is in a position of trust or authority
27 is four years. But I think it is important to go

1 back to some of the things that were said in the
2 case that articulated that starting point in the
3 first place some 20 years ago. Because beyond
4 recognizing the existence of these ranges of
5 sentences and starting points, it is important to
6 remember the reasons why higher courts came to
7 develop them.

8 The starting point of four years
9 imprisonment is significant, but it is not
10 harshness for the sake of harshness or revenge.
11 It is important for everyone to understand why
12 courts have for so many years approached these
13 cases in this manner, and, for that reason, I am
14 going to quote, at length, actually, from the
15 decision of R. v. W.B.S.; R. v. Powderface,
16 [1992] A.J. No. 601, which is the case referred
17 to in many of the authorities that have been
18 filed in this case. It was the case where the
19 idea of this four-year starting point was
20 articulated. I want to refrain from quoting more
21 than I should, but because of the circumstances
22 of this case, I think some of these things bear
23 repeating.

24 The Court started its analysis by talking
25 about the general question of the psychological
26 trauma that is suffered by sexual assault victims
27 generally and then went on to say various things.

1 The Court said:

2 When the victim of a major sexual
3 assault is a child, it is also no
4 doubt true that such an assault
frequently results in
psychological harm to the victims.

5 This is on page 4. And later on page 4, the
6 Court says:

7 One consequence of being abused
8 sexually may be that the child
9 will never be able, as an adult,
10 to form a loving, caring
11 relationship with another adult of
12 the opposite sex, being always
13 fearful, even unconsciously, that
14 such a partner will use sexual
15 acts to hurt him or her rather
16 than as an intimate expression of
17 caring and affection. There is no
18 empirical way of proving that a
19 particular child victim's
emotional trauma will or will not
make it more difficult or
impossible for him or her to love
another, without fear of abuse.
We have only the recorded
experience of men and women who
attribute their difficulties as
adults in forming mature and
fulfilling relationships to their
having been abused sexually when
they were children.

20 Another consequence of being
21 abused sexually may be that the
22 child, when he or she becomes an
23 adult, will treat a child or
24 children as he or she has been
25 treated as a child - that is, he
26 or she may abuse a child sexually.
27 There is no empirical way of
proving that a particular child
victim, when he or she becomes an
adult, will do to some child what
had been done to him or her. We
do know that sentencing judges are
commonly told by defence counsel
that the accused claims to have
been sexually abused by a man (or
by a woman, or both) who had stood

1 in a parental relationship to him
2 or her when he or she was a child.

3 Then the Court referred to an article called
4 "Impact of Child Sexual Abuse: A Review of the
5 Research", by Angela Browne and David Finkelhor,
6 of the Family Violence Research Program and the
7 Family Research Laboratory of the University of
8 New Hampshire. Those references are on page 5 of
9 the decision. Again, I want to refer to what was
10 said. The reasons I'm referring to this detail
11 will become apparent in a moment. The Court
12 noted some things that the article in question
13 made clear:

14 The initial effects of sexual
15 abuse of a child may include
16 reactions of fear, anxiety,
17 depression, anger, hostility, and
18 inappropriate sexual behaviour.
19 The long-term affects are
20 summarized as follows:

21 Adult women victimized as children
22 are more likely to manifest
23 depression, self-destructive
24 behaviour, anxiety, feelings of
25 isolation and stigma, poor
26 self-esteem, a tendency toward
27 revictimization and substance
28 abuse. Difficulty in trusting
29 others and sexual
30 maladjustment ...

31 A little bit later the Court says:

32 In addition, the authors indicate
33 that incest victims "seem
34 especially likely to experience
35 difficulty in close
36 relationships", including
37 "conflict with or fear of their

1 husbands or sex partners" and
2 failure to marry.

3 And one of the other things that the Court
4 concludes on page 6 is that:

5 ... when the accused stands in a
6 parental or other family
7 relationship with the child such
8 that he had assumed the duty to
9 protect the child from harm and is
10 the repository of trust placed in
11 him by the child, the sexual
12 assault committed by him upon the
13 child constitutes a grave breach
14 of that duty and an outrageous
15 breach of that trust.

16 These are only some of the things that the
17 Alberta Court of Appeal said in the W.B.S. case
18 in explaining why that court felt that the
19 sentences imposed in these kinds of cases should
20 be as significant as they are. Reading these
21 kinds of things, they may sound very theoretical,
22 but they are not. And this case provides a very
23 vivid illustration of this.

24 Two Victim Impact Statements were filed in
25 this case and I am going to read them into the
26 record in their entirety. I am going to read
27 them into the record in their entirety for two
28 reasons. First, because one is from the
29 grandmother and she has specifically requested on
30 the form that the document be read into court by
31 the judge. But I also want to read these into

1 the record because these Victim Impact Statements
2 bring home what these types of crimes do to the
3 victim. The parallels between what they say and
4 some of the quotes that I have just read from the
5 W.B.S. decision are striking.

6 The first Victim Impact Statement was
7 completed in July by C.'s grandmother. This is
8 what it says:

9 The way this has affected C. so
10 far is that she has changed from
11 an easy-going, free-spirited child
12 to someone who is very angry and
13 withdrawn. She has no trust in
14 anyone and can't express herself
15 as she was once able to do. She
16 is afraid and insecure. She needs
17 to keep her bedroom door and
18 windows locked at night and has to
19 have a bat under her bed. She
20 says that she doesn't understand
21 how to love and is therefore
22 unable to form any long-term
23 relationships. She holds back
24 emotionally even with close family
25 members (i.e. unable to show love
26 to grandpa or be alone with
27 grandpa). This has turned her
into a lonely person. She once
had several friends but now only
has a few casual friends that she
sees only once in a while. C.
does not like to interact with
anyone and is afraid to make close
relationships. She does not hang
out with friends except for maybe
once a week. C. wishes to have no
contact with the accused. When
she sees him again, it brings back
the memories and makes her feel
afraid again.

This was completed on the 10th of July, 2013.

The second Victim Impact Statement is
written by C. herself and it was written very

1 recently. It is dated the 15th of September and
2 was filed with the Court a few days later. This
3 is what she writes:

4 The crime that was committed
5 impacted on my life in a huge way.
6 It emotionally destroyed me. I
7 feel angry and withdraw. It
8 ruined my relationship with my
9 mom. I don't feel comfortable
10 with any older man. It makes me
11 sad and discouraged because I wish
12 it wasn't that was (sic). It made
13 me depressed and have nightmares
14 that Cole will hurt me. I don't
15 feel emotions that much anymore.
16 I can't love or trust anyone. I
17 only feel safe if I'm at my
18 grandparents or if I'm alone in my
19 room with my door and windows
20 locked. I feel boxed in and that
21 I can't express myself.

22 It financially affected my family.
23 My mom is to (sic) depressed to
24 work. That affects me in many
25 ways. It makes me feel worthless.
26 I feel if I didn't speak up and
27 tell my mom she would still be
working.

Physically it drove my mom to the
point where I don't even have a
mom. It makes me depressed, and
wish I had someone else's life.

28 These Victim Impact Statements are
29 heartbreaking, and they go a long way to explain
30 why these types of offences are considered to be
31 so serious. What the Court does today cannot
32 repair the harm done to C. I do hope that in
33 time she can heal from this, that she will get
34 some help, the help that she needs to get back
35 some of what she lost. And I hope it brings her

1 some level of comfort to know that she is not
2 responsible for what happened to her and that the
3 Court believed her.

4 I have talked at length about the principles
5 of law and the four-year starting point that
6 applies to major sexual assaults of children
7 committed by persons in authority. Here, defence
8 disputes that Mr. Griffin's conduct falls within
9 the range of conduct that triggers this four-year
10 starting point. With the greatest of respect, I
11 disagree with that submission. Mr. Griffin's
12 actions, which included the kissing of this
13 younger girl's genitals and the touching of her
14 genitals with his hand under her clothing while
15 she was sleeping, was a very serious intrusion
16 and a very serious violation of her sexual and
17 personal integrity. In my view, the starting
18 point does apply to this case. That being said,
19 a starting point is not a minimum sentence and it
20 is not an automatic sentence. The starting point
21 is a guideline that assists sentencing courts,
22 but the individual circumstances of each case
23 must still be considered from there to determine
24 what the sentence should be.

25 As noted by defence counsel, some of the
26 cases that were filed are cases where the
27 starting point did apply and yet the sentence

1 imposed was significantly lower than that
2 starting point, and I am certainly mindful of
3 that.

4 The other thing about the starting point in
5 this specific area is that it already factors in
6 many of the things that would otherwise be
7 aggravating factors and would result in an
8 increased sentence from the starting point. For
9 example, the fact that the victim was a child,
10 the fact that the offender breached the child's
11 trust, the fact that the case involved a serious
12 sexual assault. These are all things that are
13 already factored into the starting point that the
14 courts have identified.

15 Here, there are a few other aggravating
16 features to consider. First, the repetition of
17 the conduct: This was not a single act. The
18 second is something that the Crown has referred
19 to as the element of grooming that emerges from
20 the evidence. I understand the Crown's
21 submission on that, but I do think it has to be
22 balanced against other things about Mr. Griffin
23 which have been noted by his counsel: His lack
24 of maturity, the fact he found himself propelled
25 in a fatherly role at a time when he was himself
26 still young and mostly probably completely
27 ill-equipped to take on that role. None of that

1 excuses the things that he ultimately did, but it
2 does raise some question in my mind as to whether
3 he was, from the start, truly grooming C. in the
4 way we generally understand that term to mean.
5 For example, when compared to the conduct of
6 hardened pedophiles who can be very deliberate,
7 calculating, and manipulative in setting
8 themselves up to be in a position to abuse
9 children. On this point, I am not prepared to
10 conclude that Mr. Griffin, from the very start of
11 his involvement with C., planned on things
12 evolving in the direction that they did. But
13 what is beyond doubt is that at one point things
14 did take a terrible turn and that from that point
15 on, as the conduct repeated itself, it
16 necessarily had to involve some level of
17 deliberation and planning, in particular around
18 this so-called bedtime ritual. I am not able to
19 treat this as strictly a crime of opportunity or
20 a crime involving a temporary lapse on his part.
21 Because the conduct was repeated, it necessarily
22 became increasingly deliberate.

23 I also agree with the Crown that the fact
24 that C. was on one occasion assaulted while she
25 was asleep and therefore even more vulnerable is
26 aggravating as well. I say this bearing in mind
27 that it is plain on the evidence in this case she

1 was very vulnerable, in any event: because
2 during the other incidents she was awake and yet
3 she was as helpless as she was on the incident
4 where she was sleeping. And of course the fact
5 that she was as young as she was would make her
6 exceedingly vulnerable, in any event.

7 I do want to address certain aspects of the
8 defence's submission disputing the Crown's
9 characterizations of the seriousness of this
10 conduct. Of course it is always possible to
11 imagine cases involving conduct that is worse
12 than what happened here, conduct that is even
13 more serious. But some of the things that were
14 referred to by defence counsel, to my mind at
15 least, really constitute the absence of what
16 would otherwise be an aggravating factor, rather
17 than being truly mitigating. For example, the
18 absence of overt violence or threat is not
19 mitigating; it simply would be highly aggravating
20 if those elements were there. The reality is
21 that young children are vulnerable and that often
22 adults do not have to threaten them or use any
23 force or violence against them to do what they
24 want.

25 Defence counsel also noted the absence of
26 evidence of sexual gratification. I recognize
27 again there was no evidences of ejaculation or

1 things of that sort, but this contact had to
2 somehow be sexually motivated. This is what a
3 sexual assault is. The absence of evidence of
4 sexual gratification does not detract from the
5 seriousness of the conduct, nor from its obvious
6 sexual nature.

7 Defence noted the fact that there was no
8 evidence of protest. Again, that is not unusual
9 in cases involving child sexual assault. This
10 would have been exceedingly confusing for C.
11 That is part of what makes this case so serious
12 and so sad.

13 Defence noted also the fact that the
14 relationship continued for some time after these
15 events occurred, but, again, that is not unusual.
16 Delayed disclosure is something that frequently
17 happens in sexual assault matters generally, but
18 especially in the sexual assault of children.
19 Part of my instructions to the jury in this case,
20 in fact, was to this effect. There is no rule in
21 law or life as to how people who are abused or
22 subjected to trauma will react and there are lots
23 of reasons for that. So I simply do not see how
24 the fact that the family unit continued to
25 function for a period of time after these events
26 started taking place changes anything to the
27 seriousness of what happened.

1 I do not disagree with defence counsel that
2 this family situation was perhaps atypical.
3 There was a considerable age difference between
4 Mr. Griffin and C.'s mother. He was closer in
5 age to some of her children than to her. He
6 found himself taking on a role he may well not
7 have been mature enough to take on. But none of
8 that has anything to do with the fact that he
9 sexually abused C. On the evidence, I cannot
10 accept the theory of the case that would suggest
11 that these were misguided actions by a confused
12 young man who did not know exactly where the
13 parenting boundaries were. C. was very young.
14 No adult man, even a young adult man, could
15 possibly be confused about whether things like
16 touching her genitals with his hand or touching
17 her genitals with his mouth would be
18 inappropriate and criminal.

19 There are things that are in Mr. Griffin's
20 favour here in the sense that they are reasons to
21 exercise some restraint in sentencing him. The
22 first is his young age at the time that these
23 offences were committed and the fact that even
24 today he is still a young man. The second is
25 that he does come before the Court as a first
26 offender. As noted by counsel and by our Court
27 of Appeal in the case of A.J.P.J., 2011 NWTCA 2,

1 the absence of a criminal record, though, is the
2 absence of an aggravating factor. That should
3 not be confused with something that is
4 mitigating. But the young age and the lack of
5 record are factors to consider in sentencing
6 someone and they are a reason to exercise
7 restraint.

8 The Crown asks that I impose a jail term
9 between three and three and a half years.

10 Defence has argued that the range of sentence
11 should be lower, from 18 months to two and a half
12 years. Various cases have been filed and I have
13 reviewed them. As I said during submissions,
14 every case is different and there are always
15 several distinguishing features from one to the
16 next. The most relevant sentencing decisions, of
17 course, are the ones dealing with sexual assault
18 on children because those cases engage very
19 unique considerations for the reasons I have
20 already mentioned. It also makes a considerable
21 difference on sentencing when the mitigating
22 factors involve the presence of a guilty plea.
23 People should not be punished for having
24 exercised their right to have a trial of course,
25 but the fact is that people who are sentenced,
26 having pleaded guilty and having expressed
27 remorse, are given considerable credit for that.

1 In the case of Mannilaq, 2012 NWTSC 48, in
2 paragraphs 44 and 45, the Court talks about some
3 of the reasons why this is the case. Here, that
4 significant mitigating factor is not present.
5 There is no evidence of remorse and there is, in
6 fact, very little by way of mitigation.

7 Without going into all of the cases filed in
8 great detail, there are a few things I want to
9 note about them since submissions were made about
10 them.

11 R. v. C.O., 2006 NWTSC 3, was a serious
12 sexual assault committed by a father on his
13 seven-year-old son. The sentence imposed by the
14 Court of Appeal was two years. But at paragraph
15 12, the Court noted that there were several
16 mitigating factors, and there are none here. In
17 addition, in C.O., the sentence imposed at trial
18 was non-custodial. When appellate courts
19 incarcerate someone on appeal who had not been
20 sent to jail at the original sentencing,
21 oftentimes the Court exercises considerable
22 restraint and imposes the least lengthy sentence
23 possible.

24 R. v. B.K.K. [1995] N.W.T.J. No. 122,
25 involved serious sexual assaults of a young
26 person by her older brother with several
27 aggravating factors that are not present here.

1 Not surprisingly, the sentence imposed in that
2 case was much, much higher than what the Crown is
3 seeking here.

4 In *R. v. P.S.T.*, 2012 NWTSC 86, the sentence
5 imposed was three years. The facts involved
6 several acts of sexual touching by a father on
7 his daughter, but I note that all those acts
8 occurred on the same night. Serious as those
9 facts were, they did not involve a pattern of
10 repetitive behaviour over a long period of time,
11 and there was a guilty plea, which is a
12 significant distinction.

13 In *R. v. C.S.*, 2003 ABCA 325, the victim was
14 young, the assaults were serious and repeated
15 over a period of time, and it was also a case
16 where the accused was convicted after trial.
17 This was another instance where despite the very
18 high standard of review that applies on sentence
19 appeals, our Court of Appeal felt compelled to
20 interfere with the sentence imposed by the
21 sentencing judge, which was two years less a day,
22 and increased the sentence to three years.

23 These cases are all helpful illustrations of
24 how courts have balanced various mitigating and
25 aggravating factors to arrive at a fit sentence
26 in cases involving the sexual abuse of children.
27 But they, of course, do not answer the ultimate

1 question as to what the sentence should be in
2 this case.

3 Mr. Griffin has been in custody since he was
4 convicted; a period of 69 days. He has taken
5 some programs while in custody. He has helped
6 other inmates. I accept his counsel's
7 submissions that as a serving prisoner, it is
8 quite likely he would have earned full remission
9 during this time and that he did what he could to
10 make his time on remand productive. I really
11 hope that he will do the same for the whole
12 duration of his sentence, that he will take
13 programs to help him gain insight into his past
14 and to what occurred here with this particular
15 victim.

16 I am satisfied that he should receive
17 enhanced credit for the time that he has spent on
18 remand since his conviction, and so, for that
19 time, I will give him credit for three months.

20 The Crown has sought ancillary orders, none
21 of which are opposed by defence. I agree that
22 those orders should be made. Most of them, in
23 fact, are mandatory. There will be a DNA order.
24 It is mandatory because this is a primary
25 designated offence under the Criminal Code.
26 There will a firearms prohibition order pursuant
27 to Section 109 of the Criminal Code. Firearms

1 are to be surrendered forthwith and the order
2 will commence today and expire ten years from
3 Mr. Griffin's release from custody. There will
4 also be an order that Mr. Griffin comply with the
5 requirements of the Sexual Offender Information
6 Registration Act for a period of 20 years.

7 I considered the Crown's application for an
8 order to be made pursuant to Section 161 of the
9 Criminal Code. Mr. Griffin's lack of insight
10 into his conduct makes me concerned that it is
11 preferable to limit his ability to be in contact
12 with young people, and so I think it is an
13 appropriate case to use the power that the Code
14 gives me under Section 161 and effect some
15 control over his movements to that extent. So
16 there will be an order under Section 161 of the
17 Criminal Code, and it will prohibit Mr. Griffin
18 from attending a public park or public swimming
19 area where persons under the age of 16 years are
20 present or can reasonably be expected to be
21 present or a day care centre, school ground
22 playground or community centre. He will also be
23 prohibited from seeking, obtaining, or continuing
24 any appointment (whether or not the employment is
25 remunerated) or becoming or being a volunteer in
26 the capacity that involves being in a position of
27 trust or authority towards persons under the age

1 of 16 years. And he will be prohibited from
2 using the computer system within the meaning of
3 sub-section 342.1(2) of the Criminal Code for the
4 purposes of communicating with a person under the
5 age of 16 years. The Crown has asked that this
6 order be in effect for a period of ten years and
7 I agree that that is appropriate. Under the
8 terms of paragraph (2) of Section 161, the
9 prohibition will begin on the day that
10 Mr. Griffin is released from imprisonment and
11 will be in force from ten years from that date.

12 I am not going to make an order for a victim
13 of crime surcharge in this case given the length
14 of the term of imprisonment I am about to impose.

15 At the expiration of the appeal period,
16 there will be an order for the return of any
17 exhibits that were seized during this
18 investigation so that they be returned to their
19 lawful owners, if that is appropriate. If it is
20 not appropriate to return them, any exhibits that
21 are left can be destroyed. As I have said, of
22 course this has to be at the expiration of the
23 appeal period.

24 Even giving full effect to the principle of
25 restraint, even taking into account Mr. Griffin's
26 age and his lack of record, the fact remains, as
27 I hope is abundantly clear from everything I have

1 been saying, that the offence for which he has
2 been convicted was very serious. In proposing
3 the range that it has, in my view, the Crown has
4 shown restraint considering the young age of the
5 victim and the repetition of the conduct over a
6 period of time.

7 Stand up, please, Mr. Griffin. Mr. Griffin,
8 for the sexual assault you have committed on
9 C.C., I sentence you to a term of imprisonment of
10 three and a half years, which will be three years
11 and three months considering the credit I am
12 giving you for the time you have spent on remand.
13 You can have a seat.

14 I know you have some supports in
15 Yellowknife, but I will leave it up to the
16 Correctional authorities to decide where it is
17 best to have you serve your sentence. I think
18 the most important thing is that you get some
19 help and assistance to deal with whatever has
20 happened in your past and to help you move
21 forward in a positive way. I am not an expert in
22 that, but I cannot help but think that your
23 ability to reach your goal of having a healthy,
24 productive life moving forward and your ability
25 to be rehabilitated and never be in this kind of
26 situation again really depends on whether you are
27 able to get insight into what has happened, and I

