IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

-v-

DALTON LEE LAFFERTY

Transcript of the Reasons for Sentence of the Honourable Justice L. A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 20th day of August, 2019.

APPEARANCES:

M. Chertkow:	Counsel for the Crown
C. Davison:	Counsel for the Defence

Charges under s. 271 of the Criminal Code of Canada

There is a ban on the publication, broadcast or transmission of any information that could identify the complainants pursuant to s. 486.4 of the Criminal Code.

I N D E X

PAGE

OPENING STATEMENT BY THE COURT:

THE COURT: Mr. Lafferty has pleaded guilty to two counts of sexual assault, and I must now sentence him for those offences. Because both victims were under 16 at the time of the events, a mandatory minimum penalty of one year on each count applies, pursuant to s. 271(1)(a) of the *Code.*

The defence challenged this mandatory minimum penalty as contrary to the *Charter.* I have concluded that it does contravene the *Charter.* My decision on Mr. Lafferty's matter is not affected by this decision, because both Crown and defence presented submissions to the effect that the appropriate sentence would be in excess of that mandatory minimum, in any event.

Both charges arise from Mr. Lafferty having had sexual intercourse with girls who were, in law, unable to give valid consent to sexual activity. The law sets that age at 16 years old. There are certain close-in-age exceptions, where sexual contact with a person under 16 is not a crime, but those are not engaged here.

Situations like those that arose in this case are sometimes described as cases where there is "*de facto*" consent. They engage specific issues, and this case presents an opportunity for this court to address them.

I will first refer to the facts of these charges, as

alleged by the Crown and admitted by Mr. Lafferty at the sentencing hearing.

The first victim, P.G., was 14 years old in June 2017. Mr. Lafferty was 25. P.G. was walking around the community one evening and ran into Mr. Lafferty. He offered her alcohol. They drank two mickeys of vodka together. Later that evening, the two had sexual intercourse at his house. The next day, after she sobered up, she left his residence.

The second victim, K.M., was also 14 years old, in the summer of 2017. The circumstances involving the offences against her are different. In her case, the sexual activity occurred many times over several months. During the months of June to September 2017, K.M. and Mr. Lafferty were in a relationship, and had sexual intercourse a number of times. Sometimes he wore a condom, and other times he did not.

On one occasion, during the month of August, Mr. Lafferty threw her to the ground, got on top of her, and choked her. I was not told any other details about how this came about.

The agreed statement of facts do not set out the particulars of how these events came to the attention of the authorities, but eventually Mr. Lafferty was charged.

He was charged separately for each incident. He elected to have his trial by a judge and jury and to have a preliminary hearing. The preliminary hearings

proceeded. P.G. and K.M. testified at those hearings. Jury trial dates were set for both matters.

The first of the two was scheduled to commence on November 19th, 2018. On November 16, Mr. Lafferty changed his plea to guilty on that matter, as well as on the other one. Sentencing was adjourned for the preparation of a pre-sentence report and was delayed a bit more than usual, because the Crown and defence needed time to prepare materials on the constitutional challenge to the mandatory minimum penalty.

Turning to Mr. Lafferty's circumstances, he is now 27 years old, and he is of Métis descent. At the time of these events, he did not have a criminal record. He has since been convicted of three breaches of the process he was on after being charged with the offences now before me. Two were breaches of a condition that he abstain from consuming alcohol, and one was a breach of a no-contact order with respect to K.M.

The pre-sentence report that was prepared is thorough, and it provides a lot of information about the circumstances of Mr. Lafferty, including information that is relevant to the framework I'm required to apply when sentencing an Indigenous offender. I will not refer to everything that's in the report, but I have considered it carefully.

It is clear that Mr. Lafferty faced very difficult circumstances growing up. His father was physically abusive to his mother. His mother eventually began a relationship with someone else. There was a lot of alcohol abuse in the home, and Mr. Lafferty says that during those years, he was sexually abused by various people.

Because of the dysfunctional environment at his home, Mr. Lafferty was apprehended and placed in foster care. Sadly, he was physically abused by the person whose care he was placed in. His mother eventually stopped drinking completely, and then he returned living with her.

When he was 18, his mother moved to Fort Smith. At that point, Mr. Lafferty moved in with Ronald McKay, a man who is described in the report as having been a father figure for him. Mr. Lafferty lived with Mr. McKay and his wife for three years. Mr. Lafferty was involved with sports, coaching soccer to youth. Mr. McKay appears to have been a solid, positive force in Mr. Lafferty's life. Mr. McKay and his wife are still supportive of him.

Hopefully, Mr. Lafferty will be able to make the most of that support when he is released from custody, because clearly Mr. McKay and his wife saw, and still see, a lot of good in him, and believe in his potential. The best outcome for Mr. Lafferty and for his

community would be for him to find a way to develop and use that potential for good things and for constructive things. He could help others through their struggles, because he understands what it means to struggle.

Mr. Lafferty started consuming alcohol when he was 12. By the time he was 18, according to Mr. McKay, Mr. Lafferty was drinking heavily. Now, Mr. Lafferty describes himself as a functional alcoholic. He acknowledges that his substance abuse problem has caused him a lot of issues in his life.

I cannot not mention the fact that some of the things that Mr. Lafferty told the author of the pre-sentence report about these offences are of concern, because they indicate a complete lack of insight into his behaviour. For example, at page 3, the author of the report writes, and I quote:

> He appears not to understand age of consent, and maintains that his interaction with victims was consensual. When asked how he thought the victims may be feeling, he responded that they are probably feeling badly for getting him incarcerated. When asked how he is feeling about his sexual assault charges, he said, "I am sorry and ashamed of these charges, and I feel bad about the situation I am in. It is not in my personality to be facing these charges, and it

feels it is unjust that I am presently incarcerated."

Later in the report, on page 8, the author writes that:

> Dalton views himself as a charismatic person who is a leader and not easily influenced. The subject believes people like him, because he is honest, trustworthy, and smart. When asked about his weaknesses, he could not think of anything outside of his substance use.

At the sentencing hearing, both counsel made comments about those portions of the report, not surprisingly. Mr. Lafferty's counsel advised that in his discussions with him, Mr. Lafferty made it clear to him that he now understands the age of consent for sexual activity is 16, and he understands why that is. When he was given an opportunity to speak at the conclusion of submissions, Mr. Lafferty told the Court that he is sorry for what he did, that he did not realize the harm that his behaviour had caused, and that now he does.

The report was prepared in February 2018. Several months passed between then and the sentencing hearing in July 2018.

I hope that it is true that Mr. Lafferty now understands the harm he has caused and the seriousness of his behaviour. I hope that he has thought a lot about this, and will continue to think about it, about why he had these kinds of interactions with 14-

year-old girls, and about how he used alcohol in his interactions with them. I hope he comes to see that this is, in fact, very predatory behavior, that the responsibility of his situation is his and his alone, and that adults are the ones who have the ultimate responsibility not to allow things like this to happen.

I do not know Mr. Lafferty, but if it is true that he is charismatic, and that people tend to like him, then he needs to be very careful about how he conducts himself around younger people. That is, as I said, a responsibility that all adults have. Mr. Lafferty is an adult. He is a man, and he needs to act like one.

The Crown's position is that a global sentence of three and a half years should be imposed on the charge on these matters. Initially, the Crown suggested three and a half years on the charge relating to K.M., and three years concurrent on the charge relating to P.G.

But concurrent sentences cannot be imposed for these charges. The Crown acknowledges that despite this, the global sentence should still be three and a half years. In other words, the Crown is suggesting that each sentence should be adjusted to arrive at that global sentence, given that concurrent sentences cannot be imposed.

Defence suggests that a global sentence between 27 and 30 months should be imposed.

Defence suggests that a breakdown of 18 months' imprisonment for the charge regarding K.M. and nine to 12 months consecutive for the charge regarding P.G. As far as the global sentence to be imposed, Crown and defence are not that far apart.

They also agree that Mr. Lafferty should be credited for the time he has already spent in custody, and agree that this credit should be on the usual ratio of one-and-a-half-day credit for each day spent in pre-trial custody. As of July 8th, I was advised that he had spent a total of 444 days on remand. Since then he has spent a further 43 days for a total of 487 days. Credited at a ratio of a day-and-a-half for each day, which is what Crown and defence agree I should do, this adds up to credit for 730 days, which is roughly two years.

The fundamental sentencing principle is proportionality. A sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the offender.

Mr. Lafferty is Indigenous, and this engages the principle of restraint in a particular way, as was explained by the Supreme Court of Canada in *R. v. Gladue,* [1999] 1 S.C.R. 688, and *R. v. Ipeelee,* 2012 SCC 13. These principles are rooted in the recognition of the disadvantages that Indigenous peoples have been subjected to historically, the consequences that

this has had on these people, and how it has resulted in Indigenous people being overrepresented in Canadian jails.

The underlying objective of these principles is to address the issue of that overrepresentation. I'm required to take judicial notice of background and systemic factors that have had an impact on Indigenous people in this country and contributed to their overrepresentation in jails, and I have done so.

I'm also required to take into account specific things from Mr. Lafferty's background that have had an impact on him and have a bearing on his level of blameworthiness. In this case, there is ample evidence about Mr. Lafferty's upbringing and circumstances that is relevant in that regard. The dysfunctional environment he grew up in; the abuse he witnessed and was subjected to; the lack of stability arising from substance abuse issues; and domestic violence that were part of his life from the very beginning are the types of things that we sadly often hear about in sentencing hearings involving Indigenous offenders.

I am satisfied that these things reduce his degree of blameworthiness. That is not to say it excuses the conduct or makes it any less serious. It simply means that some of the struggles he has faced have an impact on his moral blameworthiness.

The Crown relies on the Alberta Court of Appeal

decision in *R. v. Hajar,* 2016 ABCA 222, which set a starting point of three years' imprisonment for what the Court called in that case, "major sexual interference."

Here we are dealing with a sexual assault charge, not a sexual interference charge, but the operative principles are the same, because these particular sexual assaults were committed on young persons, and in that respect, even though the elements of the two offences vary slightly, in effect there is considerable overlap between the behaviours that are captured by these offences.

Defence has argued that starting points established by the Alberta Court of Appeal should not mechanically be applied by courts in the Northwest Territories. Defence points out that in this jurisdiction, the principles that govern the sentencing of Indigenous offenders have particular significance, given the makeup of our population.

In *Hajar,* the majority gave a number of reasons why it considered it was necessary to have a starting point in major sexual interference cases, at paragraph 71 to 80.

These included, among others, the wide disparity in sentencing of these types of matters, which reflected widely disparate views among sentencing judges as to the gravity of such offences, when the child was a so-called “willing participant”. The majority

was concerned about sentencing judges treating the child's "willingness" to participate, as a mitigating factor -- and by some judges as a very mitigating factor -- on sentencing.

The Court noted that there have been starting points in place in Alberta for many years for major sexual assaults on adults, and found that it would be illogical not to have a starting point for major sexual assaults on children, who everyone acknowledges are especially in need of protection. The Court noted as well that a starting point exists for major sexual assaults on children by people acting in the position of a parent.

All these reasons are equally valid reasons to have a starting point for this category of offence in the Northwest Territories.

I agree with defence that, in the North, we have a high percentage of cases where the principles outlined in *Gladue* and *Ipeelee* are engaged and probably quite a bit higher than all other jurisdictions in the country, except maybe for Nunavut and Yukon.

But starting points are not minimum sentences. They are a yardstick that reflects the inherent seriousness of a certain type of offence, and where the sentencing court's analysis should begin in its proportionality analysis. Inherent in the notion of a starting point is that the sentence must be adjusted to reflect both aggravating and mitigating features of the

case. It must also be adjusted to reflect the particular level of blameworthiness of the offender before the court, because ultimately, the objective is the imposition of a proportionate sentence.

Because of this, starting points do not determine what the sentence will be. They simply are an indication of the objective seriousness of certain conduct, and of the inherent blameworthiness that attaches to it. They do not preclude, but on the contrary, require, adjustments to reflect aggravating and mitigating factors, as well as things that reduce the blameworthiness of the specific offender who is before the court.

In my view, the existence of a starting point, if its application is properly understood and implemented, does not prevent honouring the principles set out in *Gladue* and *Ipeelee.* For those reasons, I see no reason not to adopt the starting point set out in *Hajar* in this jurisdiction, and I have, for the purpose of this case. That said, I must add that establishing starting points is the role of appellate courts, not trial courts. It will be for our Court of Appeal, if and when it is seized with this issue, to address it more fully.

Quite apart from the starting point issue, one of the core propositions that *Hajar* stands for is that ostensible consent -- the majority in *Hajar* prefers that term to *de facto* consent, and so do I -- should not be

treated as a mitigating factor on sentencing. Treating it as a mitigating factor appears to be based on the assumption that the harm to the child has somehow lessened by the fact that the child was a "willing participant." The majority decision in *Hajar* explains why this assumption is wrong and gives several other reasons why ostensible consent should not be treated as a mitigating factor. That's at paragraphs 84 to 103 of that decision.

I agree with the majority's comments in this regard.

Having concluded that a three-year starting point is appropriate in these cases, and bearing in mind that P.G. and K.M.'s ostensible consent is not a mitigating factor, I turn to the aggravating and mitigating factors that are present here.

First, dealing with the mitigating factors. I have already mentioned that by operation of the principles set out in *Gladue* and *Ipeelee,* Mr. Lafferty's moral blameworthiness for these offences is reduced.

Another mitigating factor is his guilty plea on both charges. As I often say, guilty pleas are very important in cases like this, because they spare victims from having to testify. They provide certainty of outcome. They are an opportunity for the offender to acknowledge his or her wrongdoing and show remorse. Here, the comments that Mr. Lafferty made to the

author of the pre-sentence report do not suggest remorse. On the contrary, they are, as Crown counsel noted, very much in the category of victim-blaming.

But his comments at the sentencing hearing do suggest remorse. I express hope that those comments, and what he told his lawyer, were genuine and that he now truly does understand the harm he has caused, but one way or another, the fact is that his guilty pleas have avoided two jury trials, and spared these teenager girls a lot. Again, as I have often occasion to say, for having seen countless witnesses, adults and young persons, go through the process of testifying in a sexual assault trial, I am acutely aware of how difficult and painful that can be.

In assessing the weight of the guilty plea as a mitigating factor, the timing of the plea is a factor, and these were not early guilty pleas. They came very close to the date set for the first jury trial and after preliminary hearings where both girls had to testify.

Counsel had slightly different takes on what happened at the preliminary hearings.

Defence counsel, who was not counsel at the preliminary hearing, said that his understanding was that the cross-examination at those hearings was very focused in that these witnesses were not subjected to prolonged questioning. Crown counsel, who was counsel at the preliminary hearing, noted that K.M.

became distraught during the hearing.

I reviewed both preliminary hearing transcripts. It is true that in neither case, there was prolonged questioning. P.G. was asked mostly questions about her drinking, and there is nothing on the transcript that suggests that this was a particularly lengthy or harsh cross-examination. K.M.'s questioning was a bit more extensive, although, again, not extremely lengthy or prolonged. But she was asked questions about her drinking problem, about having attended residential treatment for her drinking. She was questioned about having been arrested the night before she provided her statement to police, and she was asked to explain what she meant in her statement when she said that she and Mr. Lafferty had sex.

Towards the end of the cross-examination, the presiding judge asked if she wanted a break, which is consistent with Crown's position that she was getting upset, and this is further supported by the fact that at the very end of her evidence, someone makes reference to needing to give her some Kleenex.

Obviously, Mr. Lafferty was entitled to have a preliminary hearing. He was entitled to test the Crown's case. That is often the purpose of a preliminary hearing, and normally, I would not review a preliminary hearing transcript or even attempt to gauge the type of cross-examination that a witness was subjected to.

The only reason I did so here was that it was raised and counsel had slightly different interpretations or views as to what happened. But as I already said, testifying about these kinds of personal matters would be hard on anyone, whether it's at a preliminary hearing or at a trial. Anyone who has dealt with these types of cases could well imagine that testifying about these matters would have been difficult for these girls, who were 14 and 15 at the time of the preliminary hearings.

But at the same time, this is precisely why avoiding them having to do the same thing in front of jury of 12 persons is so significant. So in short, a very early guilty plea, that avoids testimony completely, is usually given more weight than one that comes late in the proceedings, when witnesses have had to testify once, and lived with the belief, for an extended period of time, that they would have to testify again. That being said, any guilty plea, even offered at the 11th hour, still spares victims and witnesses from the need to testify, and for that, Mr. Lafferty is entitled considerable credit.

The next issue is that of whether, in relation to K.M.'s matter, the sexual contact occurred in the context of a relationship of genuine affection. *Hajar* recognized that in certain circumstances, the existence of a relationship of genuine affection may be a mitigating factor on sentencing, and in some cases,

may found to be a very weighty mitigating factor. This is addressed in the majority decision in paragraphs 130 and 131.

Justice Bielby, in her minority decision, at paragraph 178, identified some of the features of such a relationship:

> It may be that exploitation will be present in every case of sexual interference, except possibly where the offence occurs in the context of a genuine relationship of mutual respect and affection between the complainant and the accused, when the relationship, if is of some considerable duration and where the age difference between the complainant and the accused is not significantly greater than the five-year close-in-age defence.

Justice Bielby then adopts the description of Professor Sonja Grover, in her article, "On Power Differences and Children's Rights: A Dissonance Interpretation of Rind and Associates, (1988) Study on Child Sexual Abuse (2003) *Ethical Human Science & Services 21.*

Professor Grover writes:

> A relationship of genuine affection is one where a child or adolescent has the opportunity to experience sexual contact in a situation of genuine choice, in the context of an equal power relationship.

Defence argued that with respect to K.M., this exception, if I can call it that, applies, that this was a situation involving a relationship of genuine affection, and that this is a mitigating factor. The Crown disagrees with that proposition. As always, when the defence relies on a mitigating factor that is disputed, it falls to defence to establish its existence on a balance of probability. *Criminal Code,* s. 724(3)(d).

It will often be the case, in these types of cases -- and by this, I mean in cases where there is ostensible consent -- that there are some indications of affection between the parties. *R. v. Nair,* 2017 ABQB, is a good example of such a situation, where the Court nonetheless concluded that the relationship was actually dysfunctional and predatory.

Going back to the factors that were identified by Justice Bielby, in this case, the relationship with K.M. went on for a period of three months, which is not very long. The age difference between her and Mr. Lafferty was considerable, and nowhere near the close-in-age exception. The sexual encounters usually took place when they were both intoxicated. On one occasion, Mr. Lafferty was violent towards her, and it was during that same period that he engaged with P.G., offering her alcohol and having intercourse with her.

In my view, these are not features of a relationship that is based on mutual respect or one that

involves equal power for both parties. I am not satisfied that the relationship between Mr. Lafferty and K.M. had the fundamental characteristics needed to render it a mitigating factor on sentencing.

Turning to aggravating factors, aside from their inherent seriousness, these offences have some aggravating factors, including, first, the age gap between Mr. Lafferty and his victims; second, the fact that he provided alcohol to them, which rendered them more vulnerable; third, the fact that, with K.M., there were numerous incidents; four, the fact that with K.M., Mr. Lafferty did not always use condoms, thereby increasing the risk of pregnancy or sexually transmitted disease; fifth, the use of violence against K.M. on one of the occasions referred to in the agreed facts.

There's also Mr. Lafferty's criminal record, which occurred after these offences. He has already been punished for the breaches, so I do not attach much weight to his criminal record, but his failure to comply with the no-contact order with respect to K.M. shows a certain level of persistence on his part and is entirely consistent with the view that he appeared to have, at least at one point, that there was nothing wrong with his involvement with her.

The Crown has argued that the harm suffered by the victims is also an aggravating factor. In my view, the presumption of harm in these cases is very much at

the heart of the underlying rationale for the three-year starting point. This is not unlike the rationale for the four-year starting point for sexual assaults committed by a person who is in a parental position. The presumption in those cases is that in every such case, there is a very real risk, a very real harm to the child, as was noted in *R. v W.B.S.,* (1992) 73 CCC (3d) 530 (Alta CA).

Since the harm caused by these offences is built into the starting point, I do not think it should be treated as a further aggravating factor, and I find the same with respect to the victims' ages. It is inherently built into the assessment of how serious these matters are, as part of the setting of the starting point.

I have already addressed the fact that concurrent sentences are not available here, because that is prohibited by s. 718.3(7)(b). Because consecutive sentences are required, this in turns, engages another provision of the *Code,* s. 718.2(c), that states that when consecutive sentences are imposed, the combined sentences should not be unduly long or harsh. That requirement is rooted in the fundamental sentencing principle of proportionality. The global overall sentence must never exceed the overall culpability of the offender. *R. v. Kawaja,* 2012 SCC 69.

I expect that the range proposed by defence

factored in its position that for the offence involving K.M., this relationship was one of genuine affection, and this was mitigating. Having rejected that argument, I do not find that the global range proposed by defence would adequately reflect the seriousness of these offences, the aggravating factors in Mr. Lafferty's overall culpability.

I'm going to deal with the ancillary orders first. The Crown has sought a number of them.

First, with respect to the requirement to comply with the *Sex Offender Information Registration Act*, there is a constitutional challenge on the operation of those provisions, so I leave it aside for today.

These are primary designated offences, so a DNA order is mandatory, and that order will issue.

The firearms prohibition order, pursuant to s. 109 of the *Code,* is also mandatory, and that order will issue. It will be in effect as of today, and it will expire 10 years after Mr. Lafferty's release.

The Crown seeks an order prohibiting Mr. Lafferty from having contact with either victim during the custodial portion of his sentence, pursuant to s. 743.21 of the *Code.* That order will issue. And it should refer to the victims by name, obviously, for clarity's sake.

The Crown seeks an order pursuant to s. 161 of the *Criminal Code,* more specifically pursuant to

paragraphs (a), (b), and (c). This has to do with preventing someone from being in certain places, where they might come into contact with children. The Crown seeks this order to be in place for a duration of 20 years. I have carefully considered whether an order under s. 161 should issue in this case, and if so, what its duration should be.

The law is clear that the purpose of a s. 161 order is the protection of children from sexual violence. *R. v. K.R.J.*, 2016 SCC 31, *R. v. L.C.*, 2018 ONCA 311. It is a discretionary order. It is also clear that such an order is part of the sentence, part of the punishment for the offence. Because of the protective purpose of the order, a court, to make it, has to be of the view that there is a serious risk to the safety of the child or children under 16, *R. v. Doll,* 2015 NWTSC 1.

The factors to be considered in deciding whether a s. 161 order should be made overlap in many ways with the factors that affect sentencing generally, things like the circumstances of the offence, its severity, its duration, the number of victims, the impact of the victims, the criminal record -- especially if there is a related one -- and anything, really, that goes to the issue of risk of re-offending, *R. v. R.K.A.*, 2006 ABCA 82. As the Alberta Court of Appeal said in *R.K.A.,* "The danger to children is key."

Here, the offence is more serious and there are

two victims, and with K.M., they were repeated offences. They were not as young as the victims in some of the cases filed by counsel, but they were vulnerable. On the other hand, Mr. Lafferty does not have a criminal record for similar offenses.

The breaches of the no-contact order with K.M. is a concern. So is the lack of insight and empathy, initially, for his victims, as was shown when he was interviewed for the preparation of the pre-sentence report.

But I do take into account the passage of time, and the fact that Mr. Lafferty's view of the matter appears to have changed. As I've already said, and I cannot say it enough, I am hopeful he has truly acquired insight now into these matters. It did seem to be a while before he did so, but I truly hope he now has.

It's important not to overlook that there are also positive things that emerge from the pre-sentence report, including the fact, for example, that there was a time when Mr. Lafferty was involved in coaching youth when he was living with Mr. McKay. There is no indication that there was anything inappropriate that happened during this time.

On balance, I agree that a s. 161 order is warranted, to limit the possibility of Mr. Lafferty being tempted to revert to this type of conduct in the future. It

will also be helpful for the protection of teenage girls in his community. It will also be consistent -- although that's not the primary purpose -- with his own rehabilitation, because it will eliminate opportunities for him to engage with persons he should not be engaging in. All that being said, I do not think the order needs to be for as long as what the Crown seeks.

For a first offender, these proceedings and the significant amount of time Mr. Lafferty will have spent in custody as a result, will hopefully have a powerful deterrent effect on him. There's no evidence before me suggesting that he suffers from a sexual disorder that could be at the root of this conduct. That type of evidence is not required for a s. 161 order to be made, of course, but if there was evidence of such a thing, it would show a much-increased risk and perhaps justify a longer order.

So I have decided that there should be a s. 161 order pursuant to Section 161(2). It will commence when Mr. Lafferty is released from custody, and I will have it be in force for a period of three years. It will include only the prohibitions set out at paragraphs (a), (b), and (c) of Section 161. I will include an exception, in that the order will not apply to Mr. Lafferty's own children, or the children of anyone he might be in a common-law relationship with. I also want to make it clear that it is possible for the Crown or for Mr. Lafferty

to apply for a variation of this order if circumstances change.

Concretely, this means, for example, that Mr. Lafferty, after his release, wants to become involved in some of the positive activities he's been involved with in the past, such as coaching youth, he could apply for a variation of this order to permit him to do so. It would be very unfortunate to have this order interfere with positive pro-social activities that could assist him and be a part of him turning his life around, be rehabilitated, and be a productive member of whichever community he chooses to live in.

Turning to the sentence itself, I have concluded, having adopted the three-year starting point set out in *Hajar,* that a sentence in the range of two and a half to three years would be appropriate for the sexual assault on K.M., and a sentence in the range of two to two and a half years would be justified for the sexual assault on P.G. But because the sentences have to be consecutive, these would result in the imposition of a total sentence between four and a half to five and a half years.

That would be more than the global sentence that the Crown seeks, and quite apart from that, it would also, in my view, result in an excessive sentence. I have adjusted these numbers to arrive at a global sentence of three and a half years. In my view, given

the aggravating factors in this case, which I will not repeat, the global sentence of three and a half years is as restrained a sentence as the court can impose.

Can you stand please, Mr. Lafferty? Mr. Lafferty, if you did not have any time on remand, I would have imposed the sentences as follow: two years for the sexual assault on K.M., and one-and-a-half-year consecutive on the sexual assault on P.G. For the 487 days you've spent in custody already, I give you credit for two years, so there will be a further jail term of one and a half years. You can sit down.

Now, by my account, counsel, the remand time effectively covers the sentence imposed on the first count, and that leaves the count of one and a half years. Is there anything from the Crown's point of view that I've overlooked for this part of things?

M. CHERTKOW: No.

THE COURT: Anything from defence?

C. DAVISON: No, thank you.

(PROCEEDINGS ADJOURNED)

CERTIFICATE OF TRANSCRIPT

Neesons, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings transcribed from the audio recording to the best of our skill and ability. Judicial amendments have been applied to this transcript.

Dated at the City of Toronto, in the Province of Ontario, this 25th day of September, 2019.

Kim Neeson

Principal