R v Bishop, 2024 NWTSC 16

Date: 2024 04 04
Docket: S-1-CR-2022-000-076

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HIS MAJESTY THE KING

-and-

RICHARD BISHOP

REASONS FOR SENTENCE

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REASONS FOR SENTENCE OF THE HONOURABLE JUSTICE L.A. CHARBONNEAU

Counsel for the Crown: Simon Hodge

Counsel for Richard Bishop Charles Davison

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I) INTRODUCTION

[1] On April 4, 2024, I sentenced Richard Bishop for the sexual assault of M. on August 16, 2021. I gave brief oral reasons when I imposed sentence and said I would file written reasons to explain my decision in more details. These are those reasons.

[2] The sentencing hearing proceeded on February 27, 2024. The positions of counsel were far apart. The Crown sought a term of imprisonment of 4 years for the offence. Mr. Bishop's counsel acknowledged that a jail term should be imposed but urged the Court to limit it to a term of 2 years less a day to ensure that Mr. Bishop would serve his sentence in a correctional institution situated in the Northwest Territories.

II) CIRCUMSTANCES OF THE OFFENCE

[3] M. was 8 at the time of the offence. There is no familial connection between her and Mr. Bishop, but she knew him as a neighbor as they lived close to one another.

[4] On the evening in question, Mr. Bishop was driving his vehicle in the community of Behchokǫ̀. He encountered M. riding her bicycle.

[5] Mr. Bishop spoke with M. at the gas station. He was seen inside the gas station with her. She took a packet of nuts off the shelf. Mr. Bishop paid for gas, two bottles of water and the packet of nuts. He then drove away with M. in his vehicle, after having placed her bicycle in the back of his truck. The Agreed Statement of Facts states that he "agreed to give her a ride" but does not include any details as to how that came to be.

[6] Mr. Bishop took M. to the Kǫ̀ Gocho Sportsplex Centre. He left her there and drove around for a period of time. He then returned to the Centre and listened to music for a while. Eventually he and M. left. M. got into Mr. Bishop's vehicle, believing that he would take her home.

[7] Instead, Mr. Bishop drove to the neighboring community of Edzo and parked by a playground. He pulled M.'s shorts and underwear off her body. He exposed his penis and made her sit on it, pressing it against her genital region. This caused her pain. He also kissed her repeatedly on the mouth.

[8] When he was finished, M.'s clothes were put back on. Mr. Bishop then drove back to Behchokǫ̀ and dropped her off near her house.

[9] In the meantime, M.'s mother had been looking for her and was worried. She found M. crying and scared. M. told her what happened. Very distressed, M.'s mother called the police and reported the events.

[10] M.'s clothing was seized. Through forensic analysis, it was determined that that Mr. Bishop's DNA was on her underwear, including on the inside of the crotch.

[11] Mr. Bishop was charged with sexual assault. He entered a guilty plea to this charge some time ago. His sentencing hearing was adjourned to allow for the preparation of a Pre-Sentence Report and enable his counsel to obtain certain medical records. The sentencing hearing was delayed as a result of the evacuation of the City of Yellowknife due to wildfires.

[12] M.'s mother prepared a Victim Impact Statement. In it she says that M. now has a distrust of others that she did not have before. She struggles to understand what happened to her. M.'s mother also writes about her own grief, feelings of guilt, and anger about what happened to her daughter. She fears that her children are not safe and does not trust anyone anymore.

III) MR. BISHOP'S CIRCUMSTANCES

[13] Mr. Bishop is now 57 years old. He was 54 at the time of the offence.

[14] In addition to the thorough sentencing submissions of his counsel, I have the benefit of a Pre-Sentence Report that includes a lot of information about Mr. Bishop's life circumstances and some of the challenges that he has faced. The Pre-Sentence Report has been made an exhibit and is part of the record. Without attempting to summarize all of it, I find it important to refer to it in some detail.

[15] Mr. Bishop is of Tłı̨chǫ descent. Both his parents attended residential schools. They never discussed their experiences with their children.

[16] Mr. Bishop, by all accounts, grew up in a happy and healthy family environment where Tłı̨chǫ traditions and culture were fostered. Both his parents worked and were good providers. There was no abuse in the home. The family spent time on the land for weeks at a time engaging in hunting, fishing and trapping. With his family, Mr. Bishop learned the traditional ways of survival and sustenance on the land.

[17] Mr. Bishop was sexually abused by a schoolteacher when he was in grade 6 and 7. He did not share this with anyone at the time. Some years ago he told the Chief of Behchokǫ̀. The Pre-Sentence Report indicates that at the time, Mr. Bishop was contemplating taking legal action, but ultimately never went through with the process.

[18] Mr. Bishop dropped out of school in grade 8 or 9. He is unable to read or write English or Tłı̨chǫ. He has a very limited understanding of the English language.

[19] Mr. Bishop was in a relationship with a woman when he was 16 and a few years later, had a son with her. He also has a daughter, now 18 years old, from another relationship. Tragically, his son committed suicide in July 2021.

[20] While Mr. Bishop experimented with alcohol as a young adult, he considers that he was only ever a social drinker and never had a problem with alcohol. He stopped consuming alcohol some 20 years ago because of some of the medication he was taking.

[21] Mr. Bishop maintained various types of employment for a number of years. He worked at the Northern Store and Post Office as part of an after-school program. He worked as the Recreation Coordinator for the Behchokǫ̀ Community Recreational Department. He worked for both Snap Lake Diamond Mine and Diavik Diamond Mine driving heavy trucks. He also worked seasonally in forestry.

[22] Mr. Bishop has had issues with his health over the years. He recalls contracting tuberculosis when he was young and being sent to a hospital in Alberta. He also experienced health issues as an adult. He went on disability in 2011 because of problems with his hips for which he had surgery a few years ago. He still has difficulty walking. He has severe hearing impairment in both ears. He has also been diagnosed with heart problems. Medical records setting out some of these conditions and the medications Mr. Bishop has to take for them were filed at the Sentencing Hearing.

[23] Mr. Bishop has a criminal record, but it is somewhat dated, the last entries being from 2010. There are 5 convictions for violent crimes but the only jail term he ever received was a 4-month sentence for assault causing bodily harm in 1998. He does not have any prior convictions for sexual offenses.

[24] Mr. Bishop does not have any explanation or understanding of what caused him to sexually assault M. He told the author of the Pre-Sentence Report that it was a sudden act and that he just "went crazy". He takes responsibility for what he did, with no attempt to minimize it.

IV) ANALYSIS

1. Position of the parties

[25] In seeking a term of imprisonment of 4 years the Crown points to various aggravating factors and relies on the direction given by the Supreme Court of Canada in *R v Friesen*, 2020 SCC 9 [*Friesen*] about how sentencing for sexual violence against children should be approached.

[26] The Crown acknowledges that the guilty plea is mitigating. It also acknowledges that the principles set out in *R v Gladue,* 1999 CanLII 679 (SCC) are engaged, but argues that Mr. Bishop's personal circumstances and background are not as difficult or tragic as those of many offenders who come before this Court. As a result, the Crown argues, his circumstances as an indigenous offender do not reduce his moral blameworthiness to the same extent as might otherwise be the case. Crown counsel argues that, notwithstanding the mitigating factors nothing short of a penitentiary sentence can achieve the sentencing objectives in this case.

[27] Counsel for Mr. Bishop points out that despite the directions given by the Supreme Court in *Friesen*, sentencing remains an individualized exercise that must take into account the circumstances of the specific offender before the Court. Counsel underscored Mr. Bishop's personal circumstances, which would make serving a sentence in a southern penitentiary especially harsh and difficult.

[28] Counsel points to Mr. Bishop's mobility challenges, his health issues, his severe hearing impairment, lack of literacy, and extremely limited understanding of English. Aside from difficulties this would cause him in the environment of a southern penitentiary, counsel argues that Mr. Bishop would not be able to access and benefit from any rehabilitative programming delivered in the federal correctional system.

[29] Counsel argues that by contrast, a sentence served in a northern institution would facilitate Mr. Bishop's continued contact with his family and his culture, including a much better chance of interacting with other Tłı̨chǫ speakers. He also argues that overall, a sentence of 2 years less a day followed by a lengthy Probation Order with counselling conditions would be more likely to assist with Mr. Bishop's rehabilitation while also adequately addressing the other purposes and goals of sentencing. Counsel referred to a number of post-*Friesen* sentencing decisions which, he argues, show that the sentence he advocates for is within the range of what can be a fit sentence for the sexual assault of a child.

2. Sentencing Principles

[30] It is perhaps helpful to begin by referring to general sentencing principles as they existed before *Friesen* was decided.

[31] The purposes and principles of sentencing are set out in the *Criminal Code*, RSC 1985, c C-34 (the *Criminal Code*).

[32] The fundamental purpose of sentencing is to protect society and to contribute to the maintenance of a just, peaceful and safe society. The sanctions imposed have one or more specific objectives, which include: denouncing unlawful conduct and the harm it causes; deterring the offender and others from committing crimes; separating offenders from society, when necessary; assisting in the rehabilitation of offenders; providing reparations for harm done to the victims or to communities; promoting a sense of responsibility in offenders, and acknowledgment of the harm done to victims and communities. *Criminal Code*, s 718.

[33] Over the years, Parliament has added provisions that direct sentencings judges to make denunciation and deterrence the paramount sentencing objectives in certain cases, including in crimes involving the abuse of persons under 18 years of age. This was something many courts did, including courts in this jurisdiction, long before the principle was codified.

[34] As for sentencing principles, the fundamental one is proportionality: a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender who committed it.

[35] Parliament has articulated several more specific principles that are intended to inform the proportionality analysis. Some of these principles were also recognized in the jurisprudence before they were codified. For example, the young age of a victim has been treated as an aggravating factor; a relationship of trust, even one falling short of the legal definition of trust, has been considered aggravating; all other things being equal, the repetition of the conduct over a period of time has also historically led to more significant sentences than a single instance of sexual abuse.

[36] It is against this backdrop that I turn to the Supreme Court of Canada's pronouncements in *Friesen*.

3. The impact of *Friesen*

[37] Relatively speaking, the Supreme Court of Canada does not often deal with sentencing issues. In *Friesen*, it took the opportunity to discuss the serious problem of child sexual violence in our country and how sentencing courts should respond to it. The Court made a number of important pronouncements about the contemporary understanding of sexual violence against children and how that understanding should inform sentencing practices.

[38] Among other things the Court noted the prevalence of sexual violence against children; its increase; the role technology is playing in facilitating the commission of these offenses; the importance of understanding the magnitude of the harmfulness of this conduct in order to understand the true gravity of the offence and the harm it causes to victims, families and the community at large; the fact that sexual violence toward children, like the sexual abuse of adults, is a highly gendered crime that has a disproportionate impact on girls and young women, thereby perpetuating disadvantage and undermining gender equality. It also has a disproportionate impact on other groups who are vulnerable, such as indigenous children, children in government care, children with disabilities, and LGBTQ2+ youth. *Friesen*, paras 46-73.

[39] The Court stated that sentencing must reflect society's contemporary understanding of child sexual violence and that courts must ensure that the proportionality analysis gives due weight to the harmfulness and wrongfulness of the conduct. The gravity of the offence must be adequately understood and reflected in the sentences imposed. This implies a recognition of the inherent wrongfulness of sexual violence against a child, the immediate harm caused and the long-term harm that may manifest itself in the victim's adult years and will most often not be known at the time of the sentencing hearing. *Friesen*, paras 74-90.

[40] The guidance offered in *Friesen* includes a discussion about factors that should be significant in the determination of a fit sentence. These include: the likelihood to reoffend, the abuse of a position of trust or authority, the duration and frequency of the abuse, the age of the victim, and the degree of physical interference. *Friesen*, paras 121-147. The Court also stated that certain things that have been treated as mitigating by some courts are not in fact relevant, let alone mitigating: for example, so-called "*de facto* consent", victim participation, or lack of resistance by a child are not relevant considerations on sentencing. These things may coincide with the absence of what would otherwise be an aggravating factor, such as additional violence, but the absence of an aggravating factor is not a mitigating factor. *Friesen*, paras 148-154.

[41] In the Northwest Territories, many of these considerations have formed part of the analysis in sentencing for sexual assault in general, and child sexual assault in particular, for some time.

[42] For example, the prevalence of sexual violence in the Northwest Territories has been recognized multiple times, as well as the continued and pressing need for courts to do their part in denouncing this conduct and reflecting society's abhorrence

for it. The prevalence of this crime has been noted in cases involving adult victims as well as child victims. *R v Petersen*, 2008 NWTSC 17 at p 4; *R v Vital*, 2009 NWTSC 29 at p 15; *R v A.J.P.J.,* 2011 NWTCA 2 at para 16 [*A.J.P.J.*]; *R v Ransom*, 2011 NWTSC 33 at pp 9-13; *R v Lafferty*, 2011 NWTSC 60 at pp 12-14; *R v A.J.K.*, 2016 NWTSC 24 at p 5; *R v Gordon*, 2021 NWTSC 25.

[43] In addition, courts in this jurisdiction have long recognized that in child sexual abuse cases, it should be presumed that the child will suffer trauma, whether this is apparent at the time of the sentencing hearing or not. The Court of Appeal of Alberta discussed this at length more than thirty years ago in *R v S.(W.B.)*, 1992 CanLII 2761 (ABCA) [*S.(W.B.)*]. This case has been adopted in the Northwest Territories. *R v C.O.,* 2006 NWTCA 3 [*C.O.*]; *R v Griffin*, 2013 NWTSC 80; *R v Ross*, 2016 NWTSC 48; *R v N.A.,* 2015 NWTSC 2; *R v Akhiatak*, 2016 NWTSC 34.

[44] Other examples include: the similar treatment, for sentencing purposes, of sexual interference and sexual assault *R v Lafferty*, 2019 NWTSC 38 at para 35; the recognition that sexual assaults that fall short of penile penetration are nonetheless very serious; and the rejection of the notion that so called "*de facto*" consent is in any way mitigating. *Lafferty* at para 45.

[45] *Friesen* is also regularly quoted, as it was in this case, in support of the proposition that the ranges of sentences imposed for sexual violence against children should be increased. Although the Court declined to set a national starting point or sentencing range for this type of offence, it gave specific guidance on sentence increases:

> We would nonetheless emphasize that the guidance we provide about Parliament's legislative initiatives and the contemporary understanding of the wrongfulness and harmfulness of sexual violence against children applies across Canada.
>
> We are determined to ensure that sentences for sexual offenses against children correspond to Parliament's legislative initiatives and the contemporary understanding of the profound harm that sexual violence against children causes. To do so, we wish to provide guidance to courts on three specific points:
>
>> (1) Upward departure from prior precedents and sentencing ranges may well be required to impose a proportionate sentence;
>>
>> (2) Sexual offenses against children should generally be punished more severely than sexual offenses against adults; and,

> (3) Sexual interference with a child should not be treated as less serious than sexual assault of a child.

Friesen at paras 106-107.

[46] In elaborating on the possible requirement for an upward departure from prior sentencing ranges or precedent, the Court said that the imposition of proportionate sentences to respond to the gravity of sexual violence against children and the degree of responsibility of the offender will often require the imposition of substantial sentences. After having acknowledged the individualized nature of sentencing and the need for sentencing judges to retain the flexibility needed to do justice in individual cases, the Court said:

> Nonetheless, it is incumbent on us to provide an overall message that is clear. That message is that "mid-single digits penitentiary terms for sexual offenses against children are normal and that upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare and exceptional circumstances. (references omitted)

Friesen at para 114.

4. Application to this case

[47] In this case, as in most, the challenge is not the identification of relevant sentencing objectives and principles. Rather, it is the delicate task of balancing them, addressing competing interests and legitimate arguments pointing in opposite directions, with a view to arriving at a result that is just and adequately addresses the various sentencing objectives.

[48] *Friesen* is an important case. As I have already mentioned, many of the things it underscored have been part of the analysis of sentencing courts in this jurisdiction for some time. Still, the guidance provided by the Supreme Court of Canada must inform the analysis in any sentencing for an offence involving sexual violence against a child.

[49] All sexual assaults against children are serious, but the offence covers a broad range of conduct. The sexual assault committed by Mr. Bishop was not at the less serious end of the spectrum, far from it: M.'s clothes were removed; what Mr. Bishop did to her caused her physical pain; his DNA was found in the crotch of her underwear. The fact that penile penetration is not alleged does not take away from the intrusiveness of this sexual assault.

[50] M.'s young age at the time is an aggravating factor. So is the fact that Mr. Bishop was known to her as a neighbor. The evidence falls short of establishing a relationship of trust in the legal sense of the word, but it can be assumed that M. would have been more trusting to accept a ride from a neighbor than she might have been of a complete stranger.

[51] It is aggravating that Mr. Bishop drove her some distance away from her home before sexually assaulting her because it suggests an element of planning. While I am not prepared to find that Mr. Bishop's actions were well thought through and premeditated from when he first encountered M. at the gas station, I do find that by the time they left the sportsplex and he drove some distance away instead of taking her home, his intentions were not innocent and his actions were deliberate.

[52] The impact on M. is also aggravating. She was very upset immediately after these events. Since then, her mother has noticed some changes in her. This is as predictable as it is heartbreaking. Unfortunately, it is likely that the consequences of what Mr. Bishop did will have an impact on M. for many years. She will need help to come to terms with what happened to her and I hope that help is made available to her.

[53] M.'s mother is also suffering the consequences of Mr. Bishop's actions. She feels guilty, and fears for the safety of her other children. It is difficult to imagine what it will take for this mother to once again feel trust towards her neighbors and fellow community members after what happened. Again, this is predictable, and par for the course in these types of cases.

[54] I must also take into account that there are mitigating factors.

[55] The guilty plea is the most significant one. Although the Crown had the benefit of forensic evidence supporting its case, I recognize that any sexual assault prosecution involving a child as a key witness presents challenges. A guilty plea spares witnesses from having to go through a trial. That is always significant, and even more so when a vulnerable witness, such as a child, is involved. Moreover, a guilty plea constitutes a public acknowledgement of wrongdoing and provides certainty of outcome.

[56] Mr. Bishop's medical condition is relevant. *R v Musaka*, 2014 MBQB 75; *R v Norman* , 2001 MBCA 209. It is reasonable to expect that imprisonment will have a more severe impact on him because of it. That said, I note that in *Musaka*, a

sentence of 3-years' imprisonment was imposed despite the accused being terminally ill.

[57] Mr. Bishop's lack of understanding of English is also relevant because if he serves his sentence in a penitentiary in southern Canada, it will almost certainly have an impact on his ability to access programming and on his ability to interact with others and maintain a connection with his family and culture.

[58] Mr. Bishop's circumstances as an indigenous offender must also be considered. There are many positive things about his background, including his positive family environment and traditional upbringing. Still, systemic factors that have had an impact on indigenous people generally must be taken into consideration in the assessment of his moral blameworthiness.

[59] Aside from those systemic factors, there are things specific to Mr. Bishop that must be considered. He has suffered hardships that unfortunately are not uncommon in this jurisdiction. He was sexually abused as a young person by a schoolteacher. More recently, his own son committed suicide.

[60] The courts in the Northwest Territories have, for many years, followed starting points on sentencing established by the Court of Appeal of Alberta. That Court has established starting points in various areas, including sentencing for sexual offenses. For a major sexual assault committed on an adult victim, the starting point is 3 years. *A.J.P.J.* at para 12. For a major sexual assault committed on a child by a person in authority, the starting point is 4 years. *S. (W.B.)*; *C.O.*; *R v Holman*, 2014 NWTSC 13 at, para 33.[*Holman*]

[61] In *R v Hajar*, 2016 ABCA 22, the Alberta Court of Appeal found that the starting point for a major sexual interference on a child should be 3 years. *Hajar* at paras 71-81. In *Friesen*, the Supreme Court of Canada referred to *Hajar* with approval on many topics but disapproved the notion of the same starting point being used for this offence as the one used for the major sexual assault of an adult victim, stating that ranges of sentences imposed for sexual assaults of children must be higher than those imposed in cases involving adult victims. *Friesen* at paras 115-116.

[62] The Supreme Court of Canada declined, in *Friesen,* to set a national starting point or range for sentencing in child sexual assault cases. It is not this Court's role to establish starting points or ranges in sentencing. It would appear to me, however, particularly in light of the "clear message" from *Friesen* that "mid-single digits

penitentiary terms for sexual offenses against children are normal", that the 4-year starting point previously established for a single major sexual assault of a child by a person in authority may now well be, if anything, at the low end of the range or starting point for a case of single major sexual assault of a child even when there is no breach of trust in the legal sense of the word.

[63] In support of his position that a sentence of 2 years less a day followed by probation is a fit sentence in this case, Mr. Bishop's counsel referred to a number of post-*Friesen* decisions where non-penitentiary sentences were imposed in cases involving the sexual assault of children. None of these cases are from the Northwest Territories but I have considered them carefully to assess their persuasiveness.

[64] In *R v L.S.N.*, 2020 BCCA 109 [*L.S.N.*], the Crown sought a sentence of 2 years less a day and the sentencing judge imposed a suspended sentence. On appeal, the Crown maintained its position that a sentence of 2 years less a day was appropriate. The Court of Appeal allowed the appeal and varied the sentence to one of 2 years less a day. The circumstances of the offender, who was indigenous, were described as "devastating". The Court of Appeal found the position taken by the Crown to be "at the bottom end" of the appropriate range and that the sentence "could be much higher". It is noteworthy that the Court said that having regard to the direction given in *Friesen*, this sentence was "unlikely to be of any precedential value in future cases". *L.S.N.* at, para 96.

[65] In *R v C.R.H.*, 2021 BCCA 183, the sentencing judge had been presented with a joint submission for a global sentence of imprisonment of two years less a day, together with ancillary orders. The sentencing judge declined to follow the joint submission and instead imposed a combination of consecutive sentences amounting to a global sentence of 4 years' imprisonment. The appeal was conceded by the Crown.

[66] The presentation of a joint submission considerably alters the legal framework that applies on sentencing. *R v Anthony-Cook*, 2016 SCC 43. The threshold to depart from a joint submission is extremely high. The discretion of sentencing judges is severely curtailed in those cases. Judges are required to follow joint submissions even if they consider the proposed sentence to be unfit. As a result, the sentence imposed may not represent the view of the court as to what a fit sentence is.

[67] Given this, sentences that are the result of a joint submission have little precedential value. The same goes for an appellate decision that stems from a case

where a joint submission was presented and not followed. The Court of Appeal's analysis in *C.H.R.* is entirely focused on the sentencing judge's failure to properly apply the *Anthony-Cook* framework, and, not surprisingly, makes no mention of *Friesen*.

[68] In *R v Alfred*, 2021 BCCA 71, the Crown sought at trial a 3-4 year sentence. The Defence sought a suspended sentence. The trial judge imposed a sentence of 9 months. The offender appealed. The Crown did not cross-appeal. The Court of Appeal dismissed the appeal. In the absence of a cross-appeal, an increase of the sentence was not an option.

[69] Similarly, in *R v R.D.W.*, 2023 MBCA 62, the Crown sought a sentence of two years less a day and the offender argued for a conditional sentence. The sentencing judge imposed a sentence of 1 year imprisonment. The offender sought leave to appeal, seeking to have the sentence varied to a conditional sentence. The Crown did not seek leave to appeal. The offender's application for leave to appeal was denied, the Court having concluded that there was no reasonable chance of success on the appeal. Again, this decision does not represent an endorsement of the sentence imposed at trial, but merely a rejection of an offender's attempt to have it varied.

[70] I do not find any of these cases persuasive in supporting Mr. Bishop's position that a sentence of 2 years less a day would be a fit and proportionate sentence in this case.

[71] As for the cases referred to by the Crown, they are of some assistance, but also distinguishable.

[72] In *A.J.K.*, the sexual assault consisted of touching of the 10 year old victim over her clothing while she was in her bed. The behaviour was less intrusive than what Mr. Bishop did, but there was a more significant breach of trust, the accused had a related record and his guilty plea came very late, after a jury had been selected for his trial. The sentence imposed was 2 years less a day. This was the sentence that the Crown sought. The precedential value of this sentence, even aside from *Friesen*, must be assessed taking into account the position taken by the Crown at the time. Judges are often reluctant to impose a harsher sentence than the one the Crown seeks. In addition, this decision pre-dates *Friesen*.

[73] In *R v C.P.S.*, 2010 ABCA 313, which also pre-dates *Friesen*, the sexual assault consisted of two instances of touching of the victim in her genital area. The

accused was in a position of trust and the child was 10 years old. She was spanked when she objected to the touching and was told not to tell anyone. The sentencing judge imposed a sentence of 3 months followed by probation for 2 years with a house arrest condition for the first 12 months. The Court of Appeal increased the sentence to 27 months, underscoring the particular vulnerability of children, and concluded that despite being "at the lower end of the range of seriousness", the offence was still "very serious". *C.P.S.* at, para 5.

[74] *Holman*, despite being somewhat unique, and distinguishable in many respects from Mr. Bishop's case, is nonetheless instructive. The offender in that case, by all accounts, was fully rehabilitated and had been leading a productive life for many years by the time the offenses came to light. He was truly remorseful. In fact, two of the charges he pleaded guilty to stemmed from him having volunteered, during this interview with police, information about additional offenses that he had committed during the same time frame but had not been reported to police. He pleaded guilty, was indigenous and had been the victim of sexual abuse in his youth. Still, on guilty pleas, the global sentence imposed was four and a half years' imprisonment.

[75] As already noted, when dealing with serious child sexual abuse, sentencing courts must place the paramount emphasis on general deterrence and denunciation. This must not merely be reflected in the language used in sentencing decisions: it must be reflected in the sentences that are actually imposed. This is necessary because of the inherent wrongfulness of sexual violence against children and the immense devastation it causes, including, often, the perpetuation of a terrible cycle of abuse. While rehabilitation remains relevant, it does not carry as much weight as it might in other types of cases. As the Supreme Court of Canada put it in its opening words in *Friesen*:

> Children are the future of our country and our communities. They are some of the most vulnerable members of our society. They deserve to enjoy a childhood free of sexual violence. Offenders who commit sexual violence against children deny thousands of Canadian children such a childhood every year.

Friesen at para1.

[76] Criminal courts cannot, through their sentences, address the root causes of this crime. The complexity of the social problems that lead to this type of behaviour cannot be overstated. But for decades the courts in this jurisdiction have recognized the importance of denunciatory sentences for these crimes because of their

devastating impact on victims and communities and have imposed penitentiary terms in cases involving serious child sexual abuse.

[77] Despite the very thorough and able submissions presented by Mr. Bishop's counsel, I conclude that a sentence of two years less a day, even combined with a lengthy period of probation, would not meet the requirement for proportionality. It would not reflect the gravity of the offence committed against M. It would overemphasize Mr. Bishop's rehabilitation and personal circumstances at the expense of the need for the sentence to adequately reflect society's denunciation of the sexual abuse of children and the magnitude of this problem.

[78] The sentence sought by the Crown is in line with the direction and message delivered by the Supreme Court of Canada in *Friesen*. Mr. Bishop's personal circumstances and the maximum application of the principle of restraint have persuaded me that the sentence in this case can be reduced slightly from what the Crown seeks, but not by much.

[79] Mr. Bishop has spent some time a total of 57 days in custody as of the date of his sentencing hearing. Pursuant to the directions given by the Supreme Court of Canada in *R v Summers*, 2014 SCC 26 (CanLII), he is entitled to credit for this time at an enhanced ratio.

V) CONCLUSION

1. Term of Imprisonment

[80] For these reasons, but for the time Mr. Bishop has spent on remand, I would have imposed a sentence of 45 months' imprisonment. For the 57 days he has spent in custody up until today, I give him credit for 2.5 months. The further jail term imposed is therefore 42.5 months.

2. Ancillary Orders

[81] The Crown seeks an Order pursuant to section 161 of the *Criminal Code*. The objective of such an order is to avoid situations where Mr. Bishop may be alone with children as a means to avoid the repetition of this type of behavior. While Mr. Bishop does not have any prior record for sexually abusing children, he also has no insight or understanding of what caused him to behave in this way. This makes it difficult to assess the risk that he may reoffend in the future. In any event, the Court must err on the side of protecting children.

[82] An order will issue pursuant to section 161 of the *Criminal Code* and will be in effect for a period of 10 years. For the duration of the Order, Mr. Bishop will be prohibited from:

> 1. attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre. The only exception will be that Mr. Bishop will be permitted to attend the community centre in Behchokǫ̀ to attend a ceremony or commemoration following the death of family or community member, as long as he is in the immediate presence of another adult who is sober.
>
> 2. being within 100 meters of M.s residence;
>
> 3. seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years;
>
> 4. having any contact — including communicating by any means — with a person who is under the age of 16 years, unless he is in the presence of another sober adult.

[83] Sexual assault is a primary designated offence which is included in paragraph (a) of the definition of that term. *Criminal Code*, s 487.04. As a result, it is mandatory that I issue a DNA Order. *Criminal Code*, s 487.051(1).

[84] It is also mandatory that I make an Order requiring that Mr. Bishop comply with the *Sex Offenders Information Registration Act* for a period of 20 years. *Criminal Code*, ss 490.011,490.012 and 490.013(2)(b).

[85] Finally, there will be an Order pursuant to section 743.21 of the *Criminal Code* prohibiting Mr. Bishop from communicating directly or indirectly with M. and M.'s mother while serving his sentence. This Order will be endorsed on the Warrant of Committal and should refer to their full names.

[86] The Crown is not seeking the imposition of a Victim of Crime Surcharge. Given the length of sentence imposed, I decline to make such an order as it would result in undue hardship. *Criminal Code*, s 737(2)(a).

[87] The imposition of a sentence in the penitentiary makes it impossible for me to include a term of probation as part of this sentence. But Mr. Bishop is a grown man. He does not need to be ordered to seek counselling in order to do so. Given some of the things that have happened in his life, there is no doubt he could benefit from counselling. I hope this is something he chooses to pursue even if it is not mandated by a court order.

3. Judicial Recommendation regarding sentence

[88] As I have already mentioned, it seems clear that given Mr. Bishop's circumstances, serving his sentence in a penitentiary in southern Canada will be especially difficult.

[89] Over the years, certain offenders sentenced to jail terms of 2 years or more in this jurisdiction have been permitted to serve their sentence in a correctional institution within the Northwest Territories. My understanding is that this was possible because of an agreement between the federal and territorial authorities. Judges were frequently asked to endorse a recommendation to that effect on the Warrant of Committal.

[90] Mr. Bishop's counsel said during his submissions that more recently, to his knowledge, all offenders sentenced to penitentiary terms are being sent to southern Canada. There is no evidence before me as to whether this is in fact the case, whether the possibility of offenders serving penitentiary terms in a northern institution has simply disappeared, and if so, of the reasons for this change.

[91] This Court does not have the power to order where an offender will serve their sentence. However, if an agreement is still in place whereby it would be possible for Mr. Bishop to serve his sentence in a correctional facility in the Northwest Territories, it is the strong recommendation of the Court that this be considered. I make this recommendation because of his indigenous heritage, his personal circumstances, his medical conditions including his hearing impairment, and the fact that he is a unilingual Tłı̨chǫ speaker. I direct the Clerk to endorse this recommendation on the Warrant of Committal.

L. A. Charbonneau
J.S.C.

Counsel for the Crown:	Simon Hodge
Counsel for the Richard Bishop	Charles Davison

S-1-CR-2022-000-076

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HIS MAJESTY THE KING

- and –

RICHARD BISHOP

Restriction on Publication: There is a ban on the publication, transmission or broadcast of any information that could identify the complainants, pursuant to section 486.4 of the *Criminal Code*

REASONS FOR SENTENCE OF THE HONOURABLE JUSTICE L.A. CHARBONNEAU