*R v O(A),* 2023 NWTSC 32 S-1-CR-2021-000086

 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

 IN THE MATTER OF:

 HIS MAJESTY THE KING

 - v -

 O(A)

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 Oral Reasons for Sentence of The Honourable

 Justice K.M. Shaner, sitting in Yellowknife, in the

 Northwest Territories, on the 14th day of

 November, 2023.

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 APPEARANCES:

 M. Fane Counsel for the Crown

 K. Oja Counsel for the Defence

 (Remote Appearance)

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 Charges under s.271 of the Criminal Code

 There is a ban on the publication, broadcast or transmission

 of any information that could identify the complainant

 pursuant to s. 486.4 of the Criminal Code.

 These reasons have been edited and some information

 redacted to comply with the publication ban.

 1

 I N D E X

 PAGE

 DECISION 3

 CERTIFICATE OF TRANSCRIPT 29

 2

 1 DECISION

 2 THE COURT: On January 13th, 2023, A.O.

 3 pleaded guilty to three counts of sexual assault

 4 against his two stepdaughters, B and C.

 5 Agreed facts concerning all three charges

 6 were read into the record on August 1st, 2023,

 7 and convictions were entered.

 8 Today it is my responsibility to impose a

 9 sentence on Mr. O. I have to do so taking into

 10 account the nature and the circumstances of the

 11 offences, including the aggravating and

 12 mitigating circumstances, Mr. O's personal

 13 history and current circumstances, including

 14 Gladue factors, the principles of sentencing, the

 15 goals and objectives of sentencing in sexual

 16 assault, and the effects that these crimes have

 17 had on the victims.

 18 These reasons are subject to a publication

 19 ban under Section 486.4 of the Criminal Code.

 20 The facts are admitted. A.O. had two

 21 stepdaughters, B and C.

 22 The facts relating to Count 1 on the

 23 indictment, being a sexual assault against B on

 24 June 20th, 2020, are these: B's mother went

 25 upstairs in the home she shared with Mr. O and

 26 the two children to discover Mr. O naked in bed

 27 with B. He had been sexually assaulting her. A

 3

 1 spoke to Mr. O about what was happening. Mr. O

 2 subsequently assaulted A and damaged their shared

 3 property before he was arrested.

 4 Medical treatment was administered to B,

 5 which led to the discovery of a mark near her

 6 anus.

 7 Mr. O's DNA was discovered in B's underwear.

 8 The facts relating to Count 4 of the

 9 indictment are these: Mr. O started sexually

 10 assaulting B in 2014. Although her age is not

 11 specified in the statement of agreed facts, Crown

 12 counsel stated the sexual assaults started on or

 13 just before B's seventh birthday. This was not

 14 disputed by Mr. O's counsel.

 15 The sexual assaults continued for

 16 approximately six years until the final assault

 17 in June of 2020. They included oral sex, Mr. O

 18 rubbing his penis against B's genitals, and

 19 attempted and completed anal intercourse.

 20 On one occasion while sexual assaulting B,

 21 Mr. O placed his hand on her throat. B's sister,

 22 C, was in the same room sleeping and she started

 23 to wake up. Mr. O used a pillow to block C's

 24 view of what was happening.

 25 With respect to Count 5, which is a sexual

 26 assault against the younger daughter, C, the

 27 facts are these: Mr. O assaulted C on one

 4

 1 occasion when she was approximately five years

 2 old. He laid on top of her, touched her body

 3 with his hands, and pressed his penis against her

 4 body. He stopped when she protested.

 5 Finally, B and C gave statements to the RCMP

 6 about the events of June 20th, 2020, and the

 7 historic offences. B described Mr. O showing her

 8 a photograph of her maternal grandmother

 9 appearing to perform oral sex on Mr. O. Such

 10 photo was discovered on Mr. O's phone.

 11 Mr. O is an Indigenous man in his 40s who

 12 grew up in [REDACTED]. He has a criminal

 13 record dating back to 1998 when he was sentenced

 14 for sexual assault as a youth. The record also

 15 includes convictions for breaking and entering

 16 and theft, simple assault, and two convictions

 17 for serious sexual assaults in 2005 for which he

 18 received a six-year sentence. He served that in

 19 Bowden, Alberta.

 20 I had the benefit of reading both a

 21 Pre-sentence Report and a Gladue Report about

 22 Mr. O, in addition to hearing about him through

 23 his lawyer. There is significant overlap between

 24 these reports, and both are helpful. I've taken

 25 all of the information into account.

 26 Additionally, Crown counsel provided

 27 documents relating to Mr. O's time at Bowden

 5

 1 Institution. These are a Program Performance

 2 Report from 2008 pertaining to Mr. O's

 3 participation in an Aboriginal Offender Substance

 4 Abuse Program, and a Psychological Assessment

 5 Report and risk assessment regarding his

 6 participation and completion of the High

 7 Intensity Sexual Offender Program, which was also

 8 administered at Bowden.

 9 Crown counsel also provided two reports from

 10 the National Parole Board dated February 25th,

 11 2009, and January 20th, 2010, both evidencing the

 12 Parole Board's assessment that Mr. O posed a high

 13 risk to re-offend and its decision ordering him

 14 to serve his sentence until warrant expiry, which

 15 happened in 2011.

 16 Both the Pre-sentence Report and the Gladue

 17 Report contain detailed information about the

 18 history of [REDACTED], including, but not

 19 limited to, how the community changed with the

 20 advent of residential schools and other

 21 assimilation policies of successive federal

 22 governments.

 23 [REDACTED] is an elder from [REDACTED]

 24 [REDACTED who shared her knowledge with the authors of

 25 the Pre-sentence Report. The information is

 26 specific to Mr. O's community and very useful.

 27 According to the elder, children from Mr. O's

 6

 1 community were initially sent to residential

 2 school in Fort Providence and then, in 1935, to

 3 Aklavik, and finally to Grollier Hall in Inuvik

 4 beginning in 1959. Over 100 children from the

 5 community were sent away, a significant portion

 6 of the population. They returned without their

 7 language and without their traditional knowledge,

 8 survival skills, and culture. Alcohol use

 9 amongst community members became rampant and

 10 problematic. Despite some progress, the elder

 11 says the community remains plagued by alcohol and

 12 drug use. Suicide is also a problem in the

 13 community. Indeed, Mr. O has lost several

 14 friends to suicide over the years.

 15 Mr. O had the benefit of being connected to

 16 the land and his culture through his parents.

 17 The Pre-sentence Report and the Gladue Report

 18 identify a few direct links to the classic

 19 systemic factors prominent in the lives of so

 20 many Indigenous people who come before this

 21 Court.

 22 His father consumed alcohol. However, the

 23 family had food, shelter, and there was no family

 24 violence. His father managed to maintain his

 25 language.

 26 Mr. O described his childhood as being a

 27 good one. He maintains close relationships with

 7

 1 his siblings, his father, and extended family.

 2 This said, Mr. O's childhood and adolescence were

 3 nevertheless affected negatively by assimilation

 4 policies and the effects of residential school.

 5 As stated in both the Pre-sentence Report

 6 and the Gladue Report, the federal policies for

 7 Indigenous people, including, but not limited to,

 8 residential schools, led to widespread

 9 dysfunction in Indigenous communities and in

 10 Indigenous families.

 11 Mr. O recounted to the author of the Gladue

 12 Report staying at a hostel in [REDACTED]

 13 while his parents were out on the land. He was

 14 10 or 12 years old and experienced sexual abuse

 15 at the hands of older teenagers who were also

 16 staying there.

 17 He recounted to the author of the

 18 Pre-sentence Report that he experienced sexual

 19 abuse at the hands of a female caretaker who also

 20 worked at the hostel while he was staying there

 21 when he was seven or eight years old.

 22 Abuse by an older woman is also reported in

 23 the psychological report from Bowden.

 24 There was some question about the

 25 discrepancy between the Pre-sentence Report,

 26 which notes the abuse by the older teenagers, and

 27 the Gladue Report, which notes the abuse when

 8

 1 Mr. O was younger at the hands of the female

 2 caretaker at the hostel. I see no need to reject

 3 either of these, nor to reconcile them. They do

 4 not appear to be inconsistent versions of the

 5 same events, but rather they seem to be

 6 descriptions of two different sets of events. It

 7 is important to recognize that for most people,

 8 talking about such private and intimate matters

 9 is difficult. It may be that Mr. O just did not

 10 feel comfortable or capable of telling both

 11 interviewers about both things. I accept that

 12 both of these things happened to him.

 13 Mr. O started drinking alcohol as a young

 14 adult. He said he started drinking more heavily

 15 in 2018 because of work stress. He told the

 16 author of the Gladue Report that in 2020 he lost

 17 control of his drinking and that from time to

 18 time he would drink to the point of blacking out.

 19 This was reflected as well, albeit in different

 20 words, in the Pre-sentence Report.

 21 Mr. O completed grade nine in the

 22 Territorial school system. He is currently

 23 working towards a GED. He has a positive work

 24 history, describing himself as a workaholic. His

 25 Aunt [REDACTED] describes him as a hard worker as

 26 well.

 27 Mr. O is currently on remand in Fort Smith.

 9

 1 There have been no issues with his behaviour, and

 2 it appears he makes positive contributions to the

 3 institution.

 4 Sentencing objectives are set out in S. 718

 5 of the Criminal Code. They include denunciation

 6 of unlawful conduct, general and specific

 7 deterrents, rehabilitation, and promoting a sense

 8 of responsibility in offenders, and

 9 acknowledgement of the harm done to victims and

 10 to the community.

 11 The emphasis placed on each of these

 12 objectives depends on what the offence is, the

 13 circumstances under which it was committed, and

 14 the circumstances of the offender.

 15 In sexual assault, denunciation and

 16 deterrence are the primary objectives. Moreover,

 17 S. 718.04 of the Criminal Code requires the Court

 18 to give primary consideration to denunciation and

 19 deterrence where the victim is a vulnerable

 20 person, and that includes Indigenous female

 21 victims and child victims. The victims here are

 22 Indigenous, female children.

 23 The Criminal Code also sets out principles

 24 to be applied in determining what an appropriate

 25 sentence is. The overarching principle is

 26 proportionality: that is, a sentence must be

 27 proportionate to the gravity of the offence and

 10

 1 the degree of responsibility of the offender.

 2 In considering and applying the principle of

 3 proportionately, I must consider the fact that

 4 Mr. O is Indigenous and specifically consider the

 5 systemic and personal background factors,

 6 described earlier as Gladue factors, which may

 7 have contributed to him committing these

 8 offences. This helps to inform his degree of

 9 responsibility or moral blameworthiness.

 10 It's important to note as well that as the

 11 Supreme Court of Canada affirmed in R v Ipeelee,

 12 2012 SCC 13, at paragraphs 82 and 83 that:

 13 In considering Gladue factors, the

 14 Court is concerned with the overall

 15 effect of intergenerational trauma

 16 on the collective experience of

 17 Indigenous people.

 18 An Indigenous offender, such as Mr. O, does

 19 not need to establish a causal link between his

 20 circumstances and the offending behaviour, although

 21 it is not unusual for these links to be strong and

 22 obvious.

 23 Courts must also apply the principles of

 24 parity and restraint. Parity means that there

 25 should be similar treatment for like offences and

 26 offenders, bearing in mind that it does not call

 27 for identical sentences to be imposed for the same

 11

 1 crimes.

 2 In R v Friesen, 2020 SCC 9, Chief Justice Wagner

 3 and Justice Rowe, writing for the Supreme Court of

 4 Canada, said the following about the relationship

 5 between parity and the overarching principle of

 6 proportionality at paragraphs 32 and 33:

 7 Parity and proportionality do not

 8 exist in tension. Rather, parity is

 9 an expression of proportionality. A

 10 consistent application of

 11 proportionately will lead to parity.

 12 Conversely, an approach that assigns

 13 the same sentence to unlike cases

 14 will achieve neither parity nor

 15 proportionately. In practice parity

 16 gives meaning to proportionately. A

 17 proportionate sentence for a given

 18 offender and offence cannot be

 19 deduced from first principles.

 20 Instead judges calibrate the demands

 21 of proportionality by reference to

 22 the sentences imposed in other

 23 cases.

 24 Sentencing precedents reflect

 25 the range of factual situations in

 26 the world and the plurality of

 27 judicial perspectives. Precedents

 12

 1 embody the collective experience and

 2 wisdom of the judiciary. They are

 3 the practical expression of both

 4 parity and proportionately.

 5 The principle of restraint is also relevant

 6 and it requires the Court to impose no more

 7 punishment than is necessary. Relatedly, where

 8 consecutive sentences are imposed, the combined

 9 sentence must not be unduly long or harsh. This is

 10 known as the totality principle.

 11 Finally, S. 718.2(a) directs sentences should

 12 be increased or reduced to account for any relevant

 13 aggravating and mitigating circumstances, and it

 14 codifies certain factors as aggravating.

 15 The statutorily aggravating factors in this

 16 case are that Mr. O's victims are children, and

 17 that he was their stepfather and thus abused a

 18 position of trust or authority in relation to them.

 19 The Crown is seeking a global sentence of 14

 20 years for the three offences broken down as

 21 follows: For Count 1, being the June 20th, 2020,

 22 sexual assault on B, six years. This would run

 23 concurrently with a ten-year sentence for Count 4,

 24 being the sexual assaults committed against B

 25 between 2014 and 2020. This would be followed by a

 26 four-year sentence for the sexual assault against

 27 C, which is set out in Count 5.

 13

 1 In proposing this, the Crown has taken into

 2 account Mr. O's personal background and broader

 3 Gladue factors. Crown counsel has also considered

 4 amendments to S. 271 in the Criminal Code made in

 5 2015, which raised the maximum penalty of

 6 imprisonment up to 14 years for a sexual assault

 7 concerning a victim under 16 years of age and the

 8 fact that the sexual assaults set out in Count 4 of

 9 the indictment took place between 2014 and 2020,

 10 thus straddling this amendment.

 11 Defence counsel argues a 12-year global

 12 sentence would be appropriate. She points to the

 13 broad range of sentences imposed for sexual crimes

 14 against children, which is about six to 14 years,

 15 and she notes the mid-range for offences with facts

 16 similar to what is before the Court in this case is

 17 nine years. She also argues that the proposed

 18 sentence for Count 5, the offence against the

 19 younger child, C, is too high.

 20 Both counsel have presented judicial

 21 authorities to illustrate the appropriate

 22 sentencing range and the application of sentencing

 23 principles. I do not intend to go through each of

 24 them.

 25 I accept defence counsel's submission that the

 26 range is broad and that the mid-range for a

 27 sentence in these circumstances would be nine years

 14

 1 in prison.

 2 For reasons that follow I have determined that

 3 the 14-year global sentence proposed by the Crown

 4 is appropriate and needed in these circumstances.

 5 In the R v Friesen, which I referred to

 6 earlier, guidance is set out for the manner in

 7 which the principles and objectives of sentencing

 8 are to be applied in sexual crimes against

 9 children. Friesen marked a significant change in

 10 the approach, particularly the length of sentence.

 11 At paragraph 5 of the reasons, Chief Justice

 12 Wagner and Justice Rowe wrote:

 13 ... We send a strong message that

 14 sexual offences against children are

 15 violent crimes that wrongfully

 16 exploit children's vulnerability and

 17 cause profound harm to children,

 18 families, and communities.

 19 Sentences for these crimes must

 20 increase. Courts must impose

 21 sentences that are proportional to

 22 the gravity of the sexual offences

 23 against children and the degree of

 24 responsibility of the offender as

 25 informed by Parliament's sentencing

 26 initiatives and by society's

 27 deepened understanding of the

 15

 1 wrongfulness and harmfulness of

 2 sexual violence against children.

 3 Sentences must accurately reflect

 4 the wrongfulness of sexual violence

 5 against children and the

 6 far-reaching and ongoing harm that

 7 it causes to children, families, and

 8 society at large.

 9 Later, at paragraph 42, the Court noted that:

 10 "Protecting children from exploitation and harm is

 11 the overarching objective of the legislative scheme

 12 set out in the Criminal Code addressing sexual

 13 offences against children"... and that "protecting

 14 children from becoming victims of sexual offences

 15 is vital in a free and democratic society."

 16 The Court in Friesen also offered a

 17 non-exhaustive list of significant factors to

 18 consider in determining a fit sentence for sexual

 19 offences against children. These include some

 20 factors which have traditionally been treated as

 21 aggravating. They are abuse of a position of trust

 22 and authority, duration and frequency of the abuse,

 23 the victim's age, and the degree of physical

 24 interference. The list of factors also includes

 25 the likelihood the offender will re-offend as a

 26 consideration in sentencing. I will address that

 27 later on.

 16

 1 I begin my analysis with proportionately.

 2 Again, that principle is this: A sentence must be

 3 proportionate to the gravity of the offence and the

 4 degree of responsibility of the offender.

 5 Friesen offers guidance to sentencing Courts

 6 on giving effect to the gravity of the offence

 7 noting, at paragraph 76, the following:

 8 ... The sentence imposed must

 9 reflect the normative character of

 10 the offender's actions and the

 11 consequential harm to children and

 12 their families, caregivers, and

 13 communities. Specifically, Courts

 14 must recognize and give effect to

 15 (1) the inherent wrongfulness of

 16 these offences (2) the potential

 17 harm to children that flows from

 18 these offences and (3) the actual

 19 harm that children suffer as a

 20 result of these offences.

 21 The actual and potential harm flowing from

 22 Mr. O's actions is plain and obvious. The sexual

 23 exploitation of B was prolonged, spanning six

 24 years. The sexual assaults were physically

 25 invasive and no doubt painful, both psychologically

 26 and physically.

 27 The offence against C, while not invasive

 17

 1 physically, was nevertheless a violation of C's

 2 physically autonomy and integrity.

 3 Mr. O's actions were predatory and perpetrated

 4 against the most vulnerable of victims and, with

 5 respect to B, fall at the most serious end of the

 6 spectrum of sexual assault.

 7 Mr. O bears a high degree of moral

 8 blameworthiness for these crimes. He took

 9 advantage of two highly vulnerable victims to

 10 satisfy his own sexual desires.

 11 In reaching this conclusion, I have thought

 12 long and hard and taken into account the fact Mr. O

 13 is an Indigenous man from a community which was

 14 profoundly affected by the legacy of residential

 15 schools and other policies. I recognize, given

 16 what we know about the effects of those policies,

 17 that the personal and community dysfunction they

 18 caused was what likely led to Mr. O's own

 19 victimization. So, logically, that diminishes

 20 somewhat his moral culpability.

 21 At the same time, however, Mr. O's diminished

 22 culpability must be limited by the same facts. As

 23 a victim of sexual abuse himself, Mr. O knows the

 24 hurt, pain, anger, and shame victims experience

 25 from this kind of abuse. Put simply, he knew it

 26 was wrong. This is evident from the reports

 27 following his participation in substance abuse and

 18

 1 sexual offender programing at Bowden Institution.

 2 As a victim himself, Mr. O must also know

 3 these feelings of betrayal, shame, anger,

 4 resentment, and guilt do not go away, but remain

 5 imprinted on the victim's psyche forever.

 6 These offences are characterized by highly

 7 aggravating factors, some of which I've touched on

 8 already.

 9 The victims are female Indigenous children to

 10 whom Mr. O stood in a position of trust and

 11 authority. They viewed him as a father, someone

 12 who would care for and protect them, someone they

 13 could trust, and he violated that.

 14 As Crown counsel noted, these children not

 15 only lost the security of their family unit, but

 16 the fallout also led to the children's mother and

 17 the children having to leave the community of [REDACTED]

 18 [REDACTED] and resettle elsewhere. Thus they also

 19 lost their community and their friends.

 20 These offences occurred in the family home, a

 21 place where a child is entitled to feel safe and

 22 secure and protected by their parents, but also a

 23 place where they are most vulnerable.

 24 As noted, the offences against B span six

 25 years, starting shortly before her seventh

 26 birthday. They included oral sexual activity and

 27 attempted and completed anal intercourse. This is

 19

 1 perhaps the most highly aggravating factor.

 2 As set out in Friesen at paragraph 133:

 3 In sum, sexual violence against

 4 children that is committed on

 5 multiple occasions and for longer

 6 periods of time should attract

 7 significantly higher sentences that

 8 reflect the full cumulative gravity

 9 of the crime. Judges cannot permit

 10 the number of violent assaults to

 11 become a statistic. Each further

 12 instance of sexual violence

 13 traumatized the child victim anew

 14 and increases the likelihood that

 15 the risks of long-term harm will

 16 materialize. Each further instance

 17 shows a continued and renewed choice

 18 by the offender to continue to

 19 violently victimize children...

 20 The nature of the sexual assaults against B

 21 represent the most egregious degree of physical

 22 interference, no doubt causing physical pain and

 23 injury to B in addition to the psychological harm,

 24 which will last a lifetime. Again, this is

 25 extremely aggravating.

 26 B was also shown a photograph of her

 27 grandmother, depicting the grandmother engaging in

 20

 1 oral sexual activity with Mr. O. This was bound to

 2 cause significant confusion and psychological harm

 3 to B.

 4 Mr. O, on at least one occasion, decided to

 5 sexually assault B in the presence of her sleeping

 6 younger sister. When she awoke, he did not stop

 7 sexually assaulting B, but rather used a pillow to

 8 block her younger sister's view. This demonstrated

 9 a blatant disregard for both children's

 10 psychological well-being and would no doubt lead to

 11 hurt and confusion for both.

 12 Mr. O has a criminal record, which includes

 13 three convictions for sexual assault. These are

 14 relevant and they are aggravating.

 15 Mr. O finished serving his sentence for those

 16 two sexual assaults in 2011. It was only three

 17 years later, in 2014, that he began sexually

 18 assaulting B. This was despite serving a six-year

 19 sentence for sexual assault, undergoing substance

 20 abuse programming, and undergoing and completing

 21 the High Intensity Sexual Offender Program while at

 22 Bowden.

 23 There are, of course, mitigating

 24 circumstances. The most significant being Mr. O's

 25 guilty plea. The guilty plea came late, so it's

 26 mitigative affect is diminished. Nevertheless, the

 27 Crown points out it is still valuable, and I agree.

 21

 1 The guilty plea, being made freely by Mr. O,

 2 validates the victims' claims. There are times

 3 when after a trial, notwithstanding a finding of

 4 guilt, questions remain and innocence is

 5 maintained. The guilty plea here eliminates that

 6 possibility and that is worthy of consideration in

 7 Mr. O's favour. I have applied it in his favour.

 8 While I note that in both the Gladue Report

 9 and the Pre-sentence Report Mr. O seemed equivocal

 10 in taking responsibility for his actions, I agree

 11 with his counsel that there are other indicators in

 12 the two reports and from Mr. O himself that he is

 13 moving towards accepting responsibility. Mr. O is

 14 entitled to the benefit of, at least, some

 15 mitigative effect for this.

 16 In Friesen, the Supreme Court of Canada held

 17 at paragraphs 123 and 124 that:

 18 Where the sentencing judge finds

 19 that the offender presents an

 20 increased likelihood of reoffending,

 21 the imperative of preventing harm

 22 calls for emphasis on the sentencing

 23 objective of separating the offender

 24 from society in S. 718(c) of the

 25 Criminal Code. Emphasizing this

 26 objective will protect children by

 27 neutralizing the offender's ability

 22

 1 to engage in sexual violence during

 2 the period of incarceration. The

 3 higher the offender's risk to

 4 reoffend, the more the court needs

 5 to emphasize this sentencing

 6 objective to protect vulnerable

 7 children from wrongful exploitation

 8 and harm.

 9 The offender's likelihood to

 10 re-offend is clearly also relevant

 11 to the objective of rehabilitation

 12 in 718(d) of the Criminal Code:

 13 Courts should encourage efforts

 14 toward rehabilitation because it

 15 offers long-term protection.

 16 Rehabilitation may also weigh in

 17 favour of a reduced term of

 18 incarceration followed by probation,

 19 since a community environment is

 20 also often more favourable to

 21 rehabilitation than prison. At the

 22 same time, depending on the

 23 offender's risk to reoffend, the

 24 imperative of providing immediate

 25 and short-term protection to

 26 children may preclude early release.

 27 In these cases, efforts at

 23

 1 rehabilitation must begin with such

 2 treatment or programming as is

 3 available within the prison. In

 4 some cases, the only way to achieve

 5 both short-term and long-term

 6 protection of children may thus be

 7 to impose a lengthy sentence.

 8 [Citations omitted]

 9 As noted, the Crown submitted reports on Mr. O

 10 from the Bowden Institution and the National Parole

 11 Board.

 12 The two reports from Bowden suggested that

 13 Mr. O needed to gain more insight into his

 14 offending behaviour, including his anger. The

 15 psychological report on his participation in the

 16 sex offender programming while at Bowden offered

 17 that he would benefit from ongoing programming.

 18 The two reports from the National Parole Board, as

 19 I said, both found that Mr. O lacked insight into

 20 his offending and was at high risk to reoffend, and

 21 therefore he was denied early release.

 22 In my view, the circumstances of this case on

 23 their own support and justify the imposition of the

 24 14-year global sentence proposed by the Crown;

 25 however, it is worth pointing out the evidentiary

 26 record supports the conclusion that there is a

 27 likelihood Mr. O will continue to commit sexual

 24

 1 offences if he does not receive a sentence

 2 sufficiently long to engage in meaningful sexual

 3 offender and substances abuse programming, and

 4 ultimately achieve rehabilitation. Until this

 5 happens, he presents an unacceptable risk to

 6 society, particularly children and other vulnerable

 7 people.

 8 I will address defence counsel's argument that

 9 the sentence to be imposed for the sexual assault

 10 on C in Count 5 is too long. Respectfully, I

 11 disagree. The Crown is proposing a four-year

 12 sentence. While arguably the circumstances of this

 13 particular sexual assault fall at the lower end of

 14 the seriousness spectrum, the victim was very

 15 young, five years old at the time, and the assault

 16 was perpetrated by her stepfather, who was in a

 17 position of authority. Moreover, as noted, Mr. O

 18 has a previous record for sexual assault, two of

 19 which were very serious and attracted a six-year

 20 prison sentence. Something less than four years

 21 might be appropriate for an offender with no

 22 criminal record and who did not stand in the

 23 position of authority in relation to the victims.

 24 In this case and in these circumstances, however,

 25 attributing four years of the global sentence to

 26 this particular count is entirely appropriate.

 27 I have considered whether the Crown's proposed

 25

 1 total sentence of 14 years would offend the

 2 totality principle, given that is the maximum

 3 sentence for sexual assault. I have concluded that

 4 it does not.

 5 The Crown proposes that ten years of the

 6 global sentence be attributed to the ongoing sexual

 7 assaults against B, which lasted six years and

 8 include attempted and completed anal intercourse.

 9 The Crown proposes a six-year sentence for the

 10 sexual assault on June 20th, 2020, which would run

 11 concurrently with the ten-year sentence. The

 12 sentence for the sexual assault against C, the

 13 Crown is proposing four years, as discussed, and

 14 that would run consecutively, and properly so,

 15 given that it is a separate and unrelated criminal

 16 event.

 17 While acknowledging the importance of

 18 restraint, the hope of rehabilitation, and the

 19 effects of colonization on Mr. O and collectively

 20 on the people of [REDACTED] , the fact is Mr. O

 21 is guilty of egregious violations of the physical

 22 and mental integrity of these child victims and

 23 their trust. The law requires the sentence reflect

 24 the harmful effects of sexual crimes on children

 25 and the utter wrongfulness of these crimes. Mr. O

 26 needs to understand that harm and he has to be

 27 deterred from engaging in it ever again. The

 26

 1 larger community needs to understand that too.

 2 Above all, children need to be protected and they

 3 need to know they will be protected from sexual

 4 exploitation by adults.

 5 Mr. O, can you please stand?

 6 A.O., I sentence you as follows: On Count 1,

 7 you will serve a term of six years in prison. That

 8 will run concurrently with a ten-year sentence on

 9 Count 4, to be followed by a four-year sentence on

 10 Count 5. That is a global sentence of 14 years.

 11 And the amount of 1,864 days will be deducted from

 12 your total sentence as credit for time served

 13 before sentencing.

 14 You can sit down.

 15 With respect to ancillary orders, Mr. O will

 16 be prohibited from possessing any weapon described

 17 in Section 109, including a firearm or crossbow for

 18 ten years, subject to a Section 113 exemption.

 19 There will be an order to allow bodily fluids

 20 to be taken from Mr. O for DNA testing.

 21 Mr. O will be required to register and provide

 22 information under the Sex Offender Information

 23 Registration Act, and this order will remain in

 24 place for 20 years on each offence.

 25 Mr. O may not contact directly or indirectly B

 26 or C while he is in custody.

 27 There will be no victims of crime surcharge

 27

 1 imposed.

 2 (PROCEEDINGS ADJOURNED)

 3 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 1 CERTIFICATE OF TRANSCRIPT

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 3 I, the undersigned, hereby certify that the

 4 foregoing pages are a complete and accurate

 5 transcript of the proceedings taken down by me in

 6 shorthand and transcribed from my shorthand notes

 7 to the best of my skill and ability. Judicial

 8 amendments have been applied to this transcript.

 9

 10 Dated at the City of Calgary, Province of Alberta,

 11 this 15th day of December, 2023.

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 16 T. Kaga, CSR(A)

 17 Official Court Reporter

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