*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)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPEARANCES:

M. Fane Counsel for the Crown

K. Oja Counsel for the Defence

(Remote Appearance)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 CERTIFICATE OF TRANSCRIPT

2

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.

12

13

14

15 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

16 T. Kaga, CSR(A)

17 Official Court Reporter

18

19

20

21

22

23

24

25

26

27

29