
CANADA / JUDGMENT

R. v. Adams

2022 BCSC 2289

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Supreme Court of British Columbia

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2022 BCSC 2289 R. v. Adams

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Adams,

2022 BCSC 2289

Date: 20221212

Docket: 47242

Registry: Penticton

Rex

v.

Trenton Clifford Jonathan Adams

Before: The Honourable Madam Justice D. MacDonald

Oral Reasons for Sentence

Counsel for the Crown:

A.T. Vandersluys

Counsel for the Accused:

J. Pennington

Place and Date of Hearing:

Penticton, B.C.

November 22, 2022

Place and Date of Judgment:

Penticton, B.C.

December 12, 2022

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Introduction

- [1] On January 24, 2022, Trenton Clifford Jonathan Adams pleaded guilty to possession of child pornography contrary to s. 163.1(4) of the Criminal Code, R.S.C. 1985, c. C-46 [Code].
- [2] On November 22, 2022, I heard submissions on sentencing. These are my reasons for sentence.
- [3] In sentencing, I must balance the circumstances of the offence, the circumstances of Mr. Adams, the impact on the victims affected and society at large, and sentencing principles such as the need to denounce the possession of child pornography, and to deter the offender and others from committing similar crimes. The sentence imposed must also be proportionate to the gravity of the offence and the degree of responsibility of Mr. Adams.

Crown and Defence Positions

- [4] The Crown asserts a just and fit sentence in the circumstances is a custodial sentence of two years in a provincial institution. This reflects Parliament's prioritization of denunciation and deterrence for offences that involve the abuse of children. Crown acknowledges that Mr. Adams' time spent in custody will be reduced by time spent in custody prior to sentencing. At the date of the sentencing hearing, this was calculated to be 62 days' credit.
- [5] The Crown also seeks two years' probation with conditions following Mr. Adams' release. Lastly the Crown seeks ancillary orders under s. 161 of the Code, DNA samples pursuant to s. 487.051(1) of the Code, 20-year compliance with the Sex Offender Information Registration Act, S.C. 2004, c. 10 [SOIRA], and pursuant to s. 164.2(1) of the Code, a forfeiture order of the electronic devices seized from Mr. Adams by the police.
- [6] Counsel for Mr. Adams submits that a 12 to 15-month jail term is an appropriate sentence in the circumstances. After some discussion, defence did not take issue with the conditions of the probation order. Counsel asserts that Mr. Adams should be subject to the s. 161 ancillary orders for only five years.

Circumstances of the Offence

- [7] On June 21, 2019, Facebook detected two uploads, sent via Facebook messenger, which were found to contain child pornography. The account was connected to Mr. Adams. An RCMP investigation of seized electronic devices belonging to Mr. Adams found 357 images of child pornography. There were also five videos. A few of the photos were in the more serious category of depicting a young child performing fellatio and images of a six-year-old depicting genital contact.
- [8] Following the police investigation, Mr. Adams was charged with possession of child pornography. He was released on a promise to appear and remained in the community. On January 24, 2022, Mr. Adams pleaded guilty to one of the two counts, namely the possession of child pornography, contrary to s. 163.1(4) of the Code.
- [9] Mr. Adams is currently in custody, having failed to appear in court on October 11, 2022. The Justice before whom he was to appear issued a warrant. Mr. Adams was arrested and detained on October 13, 2022.
- [10] This offence has a maximum sentence of ten years, but no minimum sentence following Justice Winteringham's ruling that the mandatory minimum sentence provision in the Code was unconstitutional: *R. v. Hamlin*, 2019 BCSC 2266.

Circumstances of the Offender

- [11] I have the benefit of a pre-sentence report ("PSR") on Mr. Adams, filed February 17, 2022. I also have the benefit of a psychological report dated July 12, 2022. The following facts are based on submissions of counsel as well as the findings in these two reports.
- [12] Mr. Adams is 31 years of age. The PSR notes that Mr. Adams had a relatively stable upbringing. Mr. Adams' parents separated when he was approximately three-years-old. His mother re-partnered when Mr. Adams was approximately five years of age. His relationship with his stepfather has been okay, especially during his adult years. His mother has been very supportive of Mr. Adams and has helped him during tough times. Mr. Adams speaks only occasionally to his biological father.
- [13] Mr. Adams graduated from high school in Penticton. He described his school experience as pointless but denied any significant difficulties with school.
- [14] After graduating from high school, Mr. Adams had multiple jobs. The longest job he held was at a 7-Eleven in Lethbridge, Alberta. He worked at this job for approximately seven years. However, other jobs have only lasted a few months at a time. He advised the report writers he had multiple reasons for leaving jobs, which included being fired, conflict with his employers, quitting for not getting time off, and most currently due to this criminal proceeding. He is currently unemployed.
- [15] Mr. Adams tends to be up all night and sleeps all day. He does not have a set group of friends. He is only close with one half-sister, despite having eight siblings, some of whom are half- and step-siblings. Mr. Adams has a difficult time maintaining relationships. He has not had a romantic relationship that lasted more than eight months. He currently has no girlfriend despite expressing an interest in having a wife and children.
- [16] Mr. Adams currently lives with his mother in Vanderhoof and his mother financially supports him. Mr. Adams has no prior criminal history.
- [17] According to submissions from counsel, the admissions Mr. Adams made to the report writers indicates Mr. Adams was first exposed to pornography at the age of 12.
- [18] Mr. Adams admits he had been consuming child pornography for more than a year and that he had searched it out. He says that he has a higher than average sex drive and masturbates often. He alluded to having some deviant interests regarding pornographic content.
- [19] Mr. Adams is currently struggling with some physical health issues. In 2019 he discovered an issue with his heart. He is currently on medication and is being monitored by his doctors.
- [20] Mr. Adams has depressive symptoms but he has not been diagnosed with depression. He advised the PSR author that his depressive state stems from the fact that he is 31, living with his mother, and has no job, few friends, and no partner.

- [21] It was noted in both reports that Mr. Adams exhibits hostility toward others and is pessimistic.

Principles of Sentencing and Applicable Authorities

General

- [22] Section 718 of the Code sets out the purpose and principles of sentencing. These include the principles of denunciation, general and specific deterrence, protection of the public, rehabilitation, providing reparations for the harm done to victims and the community, and promoting an offender's sense of responsibility for, and acknowledgment of, the harm done.
- [23] Parliament has codified the primacy of the sentencing principles of deterrence and denunciation for sexual offences against children. Specifically, s. 718.01 of the Code provides that primary consideration must be given to the objectives of denunciation and deterrence when imposing a sentence for an offence that involved the abuse of an individual under the age of 18.
- [24] The primacy of deterrence and denunciation has also been emphasized by appellate courts: e.g., *R. v. G.M.*, 2015 BCCA 165 at para. 17. This extends to the possession of child pornography: *R. v. Allen*, 2012 BCCA 377; *R. v. R.L.W.*, 2013 BCCA 50.
- [25] The legislation of increased maximum sentences, and the prioritization of denunciation and deterrence for offences against children, signal Parliament's view that sexual offences against children should be treated more seriously, with stronger sanctions than those previously imposed.
- [26] Section 718.1 of the Code provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. As described in *R. v. Friesen*, 2020 SCC 9, at paras. 75-76, the gravity of an offence takes into account the normative wrongfulness of the conduct and the harm posed and caused by the conduct.
- [27] The Code also emphasizes parity: s. 718.2(b). A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Lastly, a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender: s. 718.2.
- [28] Despite these guidelines, sentences must be individualized to reflect the circumstances of the particular case and the particular offender. In *R. v. Lacasse*, 2015 SCC 64, at para. 57, the Supreme Court of Canada emphasized that sentencing ranges are guidelines, not mandatory rules. This reflects the principle that sentencing is a highly individualized process.

Impact of the Friesen Decision

- [29] In the recent decision of Friesen, the Supreme Court of Canada articulated a new analytical framework to be applied by sentencing judges when sentencing offenders who have committed sexual offences against children. The Court emphasized an upward departure from prior sentencing ranges with respect to sexual violence involving children.
- [30] In Friesen, the accused pleaded guilty to sexual interference with a four-year-old child and to attempted extortion of the child's mother. In delivering its judgment, the Court took the opportunity to send a strong message to lower courts about sentencing offenders who commit sexual violence against children. The Court stated:
- [5] we send a strong message that sexual offences against children are violent crimes that wrongfully exploit children's vulnerability and cause profound harm to children, families, and communities. Sentences for these crimes must increase. Courts must impose sentences that are proportional to the gravity of sexual offences against children and the degree of responsibility of the offender, as informed by Parliament's sentencing initiatives and by society's deepened understanding of the wrongfulness and harmfulness of sexual violence against children. Sentences must accurately reflect the wrongfulness of sexual violence against children and the far-reaching and ongoing harm that it causes to children, families, and society at large.
- [31] In Friesen, the Court held that sentences for sexual assaults must recognize and reflect both the harm caused to girls and young women and the inherent wrongfulness of the violence: at paras. 5 and 74. The Court's reasoning emphasizes that all forms of sexual violence are morally blameworthy.
- [32] The Court in Friesen canvassed the ways in which society's understanding of sexual offences against children has changed over time. In particular, the Court emphasized the importance of children's "personal autonomy, bodily integrity, sexual integrity, dignity and equality" and a shift of focus from purely physical harm to "emotional and psychological harm": at para. 56.
- [33] The Supreme Court of Canada emphasized that sexual violence against children can cause serious and pervasive harm: at paras. 58, 63, and 64. The Court stated that "sentences must recognize and reflect both the harm caused by sexual offences against children and the wrongfulness of sexual violence": at para. 74.
- [34] Friesen highlights that Parliament has mandated that sentences for sexual offences against children must increase and the need to prioritize denunciation and deterrence for offences that involve the abuse of children: at paras. 96-105. The overarching guidance provided by Friesen is that sexual offences against children should, generally, be punished more severely than those same offences perpetrated against adults.

- [35] Although denunciation and deterrence are primary considerations, the Court emphasised that judges should not lose sight of the other principles of sentencing: at para. 104.
- [36] I find the principles outlined in Friesen apply to the circumstances in this case, the possession of child pornography. This is because the production of child pornography traumatizes children. It violates their autonomy and dignity by treating them as sexual objects. This in turn causes harm that may last their entire lifetime: Friesen at para. 51.
- [37] Child pornography is a "pervasive social problem that affects the global community and its children": R. v. Inksetter, 2018 ONCA 474 at para. 22. As stated by the majority in R. v. Sharpe, 2001 SCC 2 (L'Heureux-Dubé, Gonthier and Bastarache JJ., concurring), the objective of s. 163.1 of the Code is the protection of children.

Application of Sentencing Principles

Mitigating Factors

- [38] In sentencing, I must carefully consider the aggravating and mitigating factors and the circumstances of the offender: s. 718.2(a) of the Code.
- [39] The mitigating factors in this case are the following. Mr. Adams comes before this Court with no criminal record; he is a first-time offender. The PSR author states that Mr. Adams was co-operative. Until his arrest, he was compliant with his bail conditions. Mr. Adams was not involved in the production or distribution of the pornography. Lastly, Mr. Adams pleaded guilty to the offence and took responsibility for his crime. He has spared the public the expense of conducting a trial.

Aggravating Factors

- [40] Pursuant to s. 718.2(a)(ii.1) of the Code, it is an aggravating factor if the offender abused a person under the age of 18 years. Here, the images included children as young as six performing sexual acts. Also, the size of Mr. Adam's collection, while not extensive compared to some other cases to which I was taken, nonetheless included hundreds of images.
- [41] The PSR and the psychological reports both state that Mr. Adam lacks insight into his offence. As Ms. Beckmann, the author of the psychological report, stated:

Negative emotionality was rated as fully present. Mr. Adams presented as angry towards the police and courts. He often portrayed himself as the victim, complained that the police illegally searched his residence and insisted he deserved education if he received a custodial sentence. He frequently ruminated over injustices he felt he had experienced from family and friends.

- [42] It is troubling that Mr. Adams comes across as angry with the police and the courts. He places blame on other people rather than demonstrating insight into his own behaviour.

- [43] Probably the most significant aggravating factor in this case is that Mr. Adams does not understand the harm caused by his behaviour. He maintains that his crime is victimless, stating that his crime never impacted anyone. Mr. Adams fails to understand that his collection perpetuates the ongoing abuse of children, amongst the most vulnerable members of our community.

Risk of Re-Offending and Rehabilitation

- [44] Mr. Adams exhibited a lack of remorse for his offence. This is not an aggravating factor but it may be considered when determining the risk to re-offend: *R. v. Anthony*, 2014 BCSC 2132 at para. 45; *Friesen* at para. 165.
- [45] Ms. Beckmann stated that Mr. Adams presents with a high level of dynamic risk for future sexual offending, partially due to his lack of remorse and his limited insight into his offending behaviour. Mr. Adams' lack of insight suggests that he continues to be a danger to children.
- [46] Based on testing, Mr. Adams' dynamic treatment needs fell within the high range. Mr. Adams demonstrated treatment needs in all domains, but particularly in the areas of intimacy deficits and sexual self-regulation.
- [47] Both the PSR author and Ms. Beckmann believe Mr. Adams would benefit from attending a sexual offender program that is delivered, at minimum, at a moderate intensity. However, Mr. Adams has indicated he is not open to counselling and treatment should I consider it appropriate.
- [48] I am not suggesting Mr. Adams' purported reluctance to participate in treatment constitutes an aggravating factor. Rather, I mention his reluctance to participate in treatment to assist in crafting a just and fit sentence for this individual and this offence. His reluctance to participate in treatment increases Mr. Adam's risk of re-offending because without treatment all risk factors continue to be present.
- [49] If Mr. Adams is sentenced to time in a provincial institution, a Forensic Sex Offender Program is available through the Ford Mountain Correctional Centre. Mr. Adams' access to the Internet should be monitored. Lastly, Mr. Adams would benefit from counselling to manage his feelings of low mood and to learn more adaptive coping skills.

Conclusion on Sentencing

- [50] Each party relied on a number of authorities, which I have considered. For example, the Crown relied on *Friesen*; *R. v. Branco*, 2019 ONSC 3591; and *R. v. R.J.H.*, 2020 BCSC 1070, all of which emphasized the need for denunciation and deterrence.

- [51] Branco reviewed a number of sentences for possession of child pornography. The sentences ranged from three and a half years at the upper end to an intermittent sentence of 45 days at the lower end. I note these cases pre-dated Friesen.
- [52] The defence relied on *R. v. X*, 2022 BCSC 1594, but notes that it was far more serious than the case before me. I agree. Defence also relied on *R. v. Bordal*, 2022 BCPC 19, where Judge Whonnock reluctantly accepted a joint submission and imposed a suspended sentence with two years' probation and ancillary orders. She reviewed similar cases where the sentences ranged from a 12-month conditional sentence order to 14 months' incarceration.
- [53] The Supreme Court of Canada has stated that "mid-single digit penitentiary terms for sexual offences against children are normal": Friesen at para. 114. While the principles articulated in Friesen apply to cases involving child pornography, the sentence ranges tend to be lower in child pornography cases unless the offence involved the transmission, distribution, or sale of the material. That is not the case here.
- [54] In Friesen, the sentencing judge found that the offender's lack of insight into his behaviour exacerbated his risk of re-offending. Here, Mr. Adams' lack of remorse and lack of insight into his behaviour increases his likelihood of re-offending.
- [55] Mr. Adams has not taken concrete steps to take his life in a different direction since the offence. Rather, he has put blame on others. Importantly, Mr. Adams maintains that his crime is victimless. This is very troubling given the enormous impact his offence has on society at large and specifically on children. It also does not acknowledge that the consumption of child pornography fuels a global industry that exploits and seriously harms children.
- [56] Despite the principle of restraint in s. 718.2(d) and (e) of the Code, s. 718.01 of the Code requires that I give primary consideration to the objectives of denunciation and deterrence because Mr. Adams has committed a sexual offence against children.
- [57] In my view, an 18-month sentence addresses the primacy of denunciation and deterrence in these circumstances. To the extent he is open to it, rehabilitation can be facilitated by treatment. A focus on rehabilitation is always important.
- [58] I note Mr. Adams has a heart condition and presents with low mood. In these circumstances, I reduce his sentence by two months to account for his health conditions.
- [59] I find a 16-month sentence is proportionate to the individual circumstances of this offence and this offender. It is consistent with *R.J.H.*, a more serious case but which pre-dated Friesen, where Mr. H. received a 16-month sentence for possession of child pornography. It satisfies the principle of parity, required by s. 718.2(b) of the Code.

- [60] This length of sentence, followed by two years' probation, also recognizes the seriousness of the offence. It gives effect to Friesen, while also recognizing that this offence, while grave, does not accord with the facts in a number of other cases to which I was taken. Specifically, Mr. Adams did not engage in the distribution or sale of child pornography.
- [61] While the emphasis is on denunciation and deterrence, this sentence, as a whole, takes into account rehabilitation and the principle of restraint, as required by s. 718.2(d) and (e) of the Code.

Sentence

- [62] Considering the facts of this case, your background, the aggravating and mitigating circumstances, and the principles of sentencing, I have decided that a fit and proportionate aggregate sentence in your case is a sentence of 16 months for the possession of child pornography. Counsel agree that your sentence is to be reduced by the amount of time you have already served, which will be credited at time and one half. It is calculated to be 90 days.
- [63] You should be referred to the Ford Mountain Correctional Centre, or another suitable program, for sex offender treatment.
- [64] Your incarceration is to be followed by two years' probation. Therefore, following the expiry of your sentence you will be bound by a probation order for two years and you will abide by the following conditions:
1. You will keep the peace and be of good behaviour.
 2. You will appear before the court when required.
 3. You must report in person to a probation officer at the nearest place of your release within two business days after your release from custody unless you have obtained, before your release from custody, written permission from the probation officer to report elsewhere or within a different time frame. After that, you must report as directed by your probation officer.
 4. You must live at an address approved in advance by your probation officer and provide them with your phone number. You must not change your address or phone number without prior written permission from your probation officer.
 5. You will attend and participate in and complete any intake, assessment, counselling, or education program as directed by your probation officer, including but not limited to sexual offence prevention.

You must not have any contact, communication, directly or indirectly, or be in the presence of any person under the age of 16. The exception is as follows:

With the prior written permission of your probation officer. Such permission is to be given only for compelling reasons. You must carry the permission, which can be in electronic format, with you at all times.

7. You must not engage in volunteer work or employment that would bring you in contact with persons under the age of 16 years without the prior written permission of your probation officer. You must carry this permission, which can be in electronic format, when you are engaged in the activity.

Ancillary Orders

- 1) Pursuant to s. 487.051(1) of the Code, you are required to provide samples of bodily substances that are reasonably required for the purposes of forensic analysis of DNA, as the offence of possession of child pornography is a primary designated offence. The samples should be taken by the least intrusive means available.
- 2) You must comply with the Sex Offender Information Registration Act for 20 years, as possession of child pornography is a designated offence under s. 490.011 of the Code with a maximum term of imprisonment of ten years.
- 3) Pursuant to s. 164.2(1) of the Code I order the forfeiture of the electronic devices seized from you.
- 4) Pursuant to s. 161 of the Code, you are prohibited, starting on the date of your release from prison, and for five years thereafter, from:
 - a. 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, school ground, playground, or community centre;
 - b. seeking, obtaining, or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer, in a capacity that involves a position of trust or authority towards persons under the age of 16;
 - c. having contact or communication with a person who is under the age of 16 years;
 - d. using the Internet or other digital network.

The exceptions are as follows:

- i. in the presence of (under the supervision of) a person approved in writing by the court, your probation officer, your parole officer, a member of the Royal Canadian Mounted Police, or the person to whom you are reporting under the Sex Offender Information Registration Act. You must carry a copy of the written permission with you.

ii. lawful employment, with the circumstances of employment being approved in advance in writing by the court, your probation officer, your parole officer, a member of the Royal Canadian Mounted Police, or the person to whom you are reporting under the Sex Offender Information Registration Act. You must carry a copy of the written permission with you.

iii. as approved in advance in writing by the court, your probation officer, your parole officer, a member of the Royal Canadian Mounted Police, or the person to whom you are reporting under the Sex Offender Information Registration Act. You must carry a copy of the written permission with you.

iv. you may access the Internet but not access any illegal content, communicate with persons under the age of 16 other than immediate family members, or access any social media sites, social network, Internet discussion forum or chat room, or maintain a personal profile, on any such service (e.g. Facebook, Twitter, Tinder, Instagram, or any equivalent or similar service).

"D. MacDonald J."

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