

CANADA / JUDGMENT

# R. v. Atanassov

2025 BCSC 159

## COURT

Supreme Court of British Columbia

## DECIDED

6 February 2025

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2025 BCSC 159 R. v. Atanassov

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Atanassov,

2025 BCSC 159

Date: 20250206

Docket: X084482

Registry: New Westminster

Rex

v.

**Paul Plamenov Atanassov**

Restriction on Publication: A publication ban has been mandatorily imposed under s. 486.4(2) of the Criminal Code prohibiting the publication, broadcast or

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representations made and the reasons, if any, given in respect of the application for judicial interim release (bail).

Before: The Honourable Justice Devlin

## Oral Reasons for Sentence

### Crown Counsel:

S.M. Bertrand

K. LeNoble

### Counsel for the Defence:

T.C. Paisana

M.J. Gismondi

### Date of Sentencing Submissions:

January 20, 2025

### Place and Date of Sentence:

Vancouver, B.C.

February 6, 2025

THE COURT: This decision was delivered in the form of Oral Reasons. The Reasons have since been edited for publication.

## Introduction

- [1] On April 30, 2024, Mr. Atanassov pleaded guilty to the following offences: Count 1, the sexual interference of L.B. and N.G., contrary to s. 151 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]; and Count 2, the making of child pornography, contrary to s. 163.1(2) of the Code.
- [2] The Crown and counsel for Mr. Atanassov agree that these offences require a term of imprisonment, and that the sentences for each count ought to be served consecutively. The parties diverge on the appropriate quantum of sentence.
- [3] The Crown submits that a fit sentence for Count 1 is five years' imprisonment, followed by four years' imprisonment for Count 2. The Crown suggests a global sentence of 8 years' imprisonment to conform with the totality principle. The Crown also seeks a number of ancillary orders which, with one minor exception, Mr. Atanassov does not oppose.
- [4] Counsel for Mr. Atanassov submit that appropriate sentences in this case would be three years' imprisonment for Count 1 and six months' imprisonment for Count 2. They submit that a probation order of unspecified length should follow this sentence.

## Circumstances of the Offence

- [5] The parties filed an Agreed Statement of Facts ("ASF") in support of Mr. Atanassov's guilty plea. I would summarize those agreed facts as follows.

## Background Circumstances

- [6] Mr. Atanassov met L.B. in the spring of 2021, on the social media application Snapchat. Mr. Atanassov similarly met N.G. on Snapchat in June 2021. He used the alias "A" when communicating with both L.B. and N.G. online.
- [7] At all material times, L.B. was 12 years old and N.B. was 14 years old. Mr. Atanassov was 24 years old.
- [8] At an in-person meeting with Mr. Atanassov, L.B. said that she was in high school. L.B. did not say, nor did Mr. Atanassov ask her to specify which grade she was in at the time.
- [9] N.G. told the police that during her first in-person meeting with Mr. Atanassov, she advised Mr. Atanassov that she was 14 years old and in grade eight.
- [10] The parties agree that Mr. Atanassov did not take reasonable steps to ascertain the ages of L.B or N.G.

## L.B. Incidents

- [11] Mr. Atanassov met L.B. on about four occasions. On all but one of these occasions he engaged in sexual activity with L.B., and on two occasions he recorded the sexual activity. Those videos are discussed below. On several occasions Mr. Atanassov also offered L.B. drugs, alcohol, and cigarettes.

## N.G. Incidents

- [12] N.G. attended Mr. Atanassov's residence on two occasions.
- [13] On one occasion, Mr. Atanassov offered alcohol and drugs to N.G. and her friends. He then disrobed N.G. and kissed her inner thighs. N.G. stopped the incident from going further and Mr. Atanassov discontinued his advances.
- [14] On the other occasion, N.G. was present when Mr. Atanassov engaged in sexual activity with L.B. and observed Mr. Atanassov recording the incident.

## Circulation of Video

- [15] Mr. Atanassov sent a video of himself having vaginal intercourse with L.B. to D.W., another young person. D.W. sent the video to L.B. and others. The video circulated on the social media application Instagram among L.B.'s peer group.
- [16] Unbeknownst to Mr. Atanassov, the video was obtained by L.R.G., a teenager. L.R.G. sent the video to T.B., L.B.'s mother, who then contacted the police. T.B. turned her cellphone and L.B.'s cellphone over to police, whose searches located the video on each phone.

## Arrest and Searches

- [17] Mr. Atanassov was arrested on July 18, 2021. A search warrant was executed on his residence and vehicle. Several cellphones were seized from the vehicle and bedding was seized from the residence.
- [18] An analysis of a fitted sheet taken from Mr. Atanassov's master bedroom located L.B.'s DNA. Searches of Mr. Atanassov's seized cellphones located:
- Four videos depicting Mr. Atanassov engaging in sexual acts with L.B., including vaginal intercourse and L.B. performing oral sex on Mr. Atanassov.
  - A document with several names and corresponding numbers, including an entry bearing L.B.'s first name and the number "12".
- [19] The video located on L.B.'s and T.B.'s cellphones, as well as the four videos located on Mr. Atanassov's seized cellphones, were filed for the purpose of Mr. Atanassov's sentencing. The court sealed these materials.

## Impact on Victims

- [20] L.B. and N.G. did not provide victim impact statements for the court's consideration on sentencing. However, "direct evidence from children or their caregivers is not required for the court to find that children have suffered actual harm as a result of sexual violence": R. v. Friesen, 2020 SCC 9 at para. 86 [Friesen]. I have no doubt that both L.B. and N.G. have suffered and will continue to suffer life-altering emotional and psychological harm because of Mr. Atanassov's offending, as they mature into young women and proceed further in life.
- [21] Indeed, the Crown advises that L.B. experienced anxiety and depression, turned to alcohol and substance use, lost friendships, and became a social pariah among her peer group following the dissemination of the video depicting her being sexually assaulted by Mr. Atanassov. In particular, the Crown advises that in its most recent meeting with L.B., she reported an addiction to crack-cocaine and ongoing anxiety related to a fear that Mr. Atanassov could threaten her with the illicit videos that he recorded of her.
- [22] The Crown further advises that while N.G. is doing well now, she did not provide a victim impact statement because of a concern that participating in Mr. Atanassov's sentencing would retraumatize her.
- [23] Accordingly, the absence of victim impact statements does not detract from this Court's ability to recognize the immense and enduring harms that Mr. Atanassov's offending predictably caused L.B. and N.G., as well as the "ripple effect" that those harms have had on members of each child's families and communities: Friesen at paras. 63. A "ripple effect" of this sort is especially pernicious in this case because T.B., L.B.'s mother, was directly exposed to illicit material depicting her daughter being sexually abused.

## Circumstances of Mr. Atanassov

- [24] Mr. Atanassov is 28 years old. He was 24 at the time of the offences. In addition to submissions by Mr. Atanassov's counsel, I have been provided with significant detail with respect to Mr. Atanassov's background from three sources:
- a presentence report dated July 25, 2024, authored by probation officer James Nicholson (the "PSR");
  - a forensic psychiatric report dated October 24, 2024, authored by Dr. Stuart Lax (the "Lax Report"); and
  - a psychological assessment report dated December 4, 2024, authored by Dr. Patrick Bartel (the "Bartel Report"), prepared at the request of the defence.
- [25] Mr. Atanassov was raised in Surrey, BC. He shared his family home with his parents and his older brother David, to whom he reports being close. His childhood environment was loving and free from violence. David Atanassov passed away in January 2023, while Mr. Atanassov was in custody.
- [26] Mr. Atanassov completed post-secondary education and became licenced as a realtor in 2018. He reports working in that capacity until July 2021, when he lost his job after his employer learned of these proceedings. He reports generally putting his career on hold pending the disposition of this case.
- [27] Mr. Atanassov has no criminal history. Mr. Atanassov was initially arrested on July 18, 2021, and was released on a police undertaking with conditions. He was then charged and arrested on November 17, 2021, including for an allegation of breaching his undertaking by communicating with K.S., a 16-year-old female. He was granted bail on December 17, 2021, but has been in custody since November 11, 2022, due to a breach of his bail conditions.
- [28] Mr. Atanassov has a history of drug use, both at the time of the offences and following his arrest. Dr. Lax and Dr. Bartel each opined that Mr. Atanassov has previously experienced an opioid use disorder: Bartel Report at para. 28; Lax Report at p. 10. Mr. Atanassov reports no current addictions, and sees a drug and alcohol counselor while in custody.
- [29] Both Dr. Lax and Dr. Bartel opined that after his arrest, Mr. Atanassov may have experienced a clinical depressive episode, but each found that he does not currently present with any major mental illness: Bartel Report at para. 28; Lax Report at p. 10.
- [30] Mr. Atanassov reports experiencing severe respiratory distress starting in May 2022. He was diagnosed with asthma and prescribed Symbicort. He reports improvements in his respiratory health while in custody.

- [31] Mr. Atanassov has inconsistently reported his sexual history. Mr. Atanassov told Mr. Nicholson that he estimates he has had a total of 10-12 sexual partners: PSR at p. 3-4. He estimated to Dr. Bartel a total of 30 sexual partners, while the notes of another counsellor with whom Mr. Atanassov has spoken (Dr. Carla Dassinger) suggest between 50 and 70 past partners: Bartel Report at para. 25.
- [32] In any event, Mr. Atanassov describes generally becoming sexually active in his teens, and reports frequent casual sexual activity in the lead-up to the offences. He told Dr. Lax that at the time he was having sex with a "new girl" every couple of days, that he would have sex almost every day, and that he would find sexual partners "everywhere": Lax Report at p. 2. Mr. Atanassov reports finding "youth" to be an attractive quality but says he does not "have a thing for young girls": Bartel Report at para. 25.

#### Insight into Offences

- [33] Mr. Atanassov made various and sometimes contradictory comments about his offences to the report writers.
- [34] Mr. Nicholson interviewed Mr. Atanassov on June 13, 2024. During the interview, Mr. Atanassov said that he felt "devastated and horrible" about his actions. He told Mr. Nicholson that he was "reckless" at the time of the offences, because the victim had given him magic mushrooms and because he had lots of money, a new vehicle, and his parents' house to himself: PSR at p. 5.
- [35] Dr. Bartel interviewed Mr. Atanassov on September 4, 2024. During the interview, Mr. Atanassov said that his sexual activity with L.B. was "mutually instigated", and that she was a "willing participant": Bartel Report at para. 6. Conversely, he told Dr. Bartel that the offences were "straight up my fault", that he had been "reckless and undisciplined", and that it was "devastating" for him when he found out the ages of the victims: at para. 8.
- [36] Dr. Lax interviewed Mr. Atanassov on October 23, 2024. During the interview, Mr. Atanassov told Dr. Lax that, with respect to filming L.B., "[s]he brought it up and then I did it". He said that the sexual activities depicted in one of the videos were "what she [L.B.] wanted to do" and that "I was doing it for her". He said that another video demonstrates that she was "all over me". Lax Report at p. 3.
- [37] However, Mr. Atanassov also told Dr. Lax that the offences were "devastating" because L.B.'s "mom was devastated", and that L.B. "has a whole life ahead and this just fucked her over, and I lost my job and my career": Lax Report at p. 4. He said that the offences happened because of a "combination of the fact that my parents were not there", his use of drugs at the time, and L.B. looking "like a grown woman", despite being only 12 years old: at p. 5. He acknowledged sending a video depicting him having sex with L.B. to D.W. Mr. Atanassov said that he does not know why he sent the video, but that maybe he did so to "make her feel jealous": Lax Report at p. 4.

- [38] Finally, Mr. Atanassov directly addressed the court at the sentencing hearing. He apologized to the victims and to their families. He expressed gratitude to his parents and described the shame that he feels about his offending. He told the court that he understands that there are no excuses for his actions, and that he hopes to earn forgiveness and to pay his debt to society. I found Mr. Atanassov's remarks to be genuine and sincere.
- [39] I will return to some of the comments made by Mr. Atanassov later in these Reasons. At this stage, I observe that Mr. Atanassov generally presents as an offender who, at the time of the offences, willingly engaged in careless, high-risk, self-indulgent behaviour and who had deficiencies in his moral compass (Bartel Report at para. 36). However, I find that Mr. Atanassov's own statements demonstrate a gradual, real change in his perspective and his insight into the harm he has caused to L.B., N.G., and others. I find that this development, if supported with additional counselling and programming, bodes well for his prospects of rehabilitation.

#### Risk Assessments

- [40] Dr. Lax and Dr. Bartel both opined on the risk that Mr. Atanassov presents for future sexual offending.
- [41] Dr. Lax acknowledged that his risk assessment was "significantly compromised by the fact that much of what is known about [Mr. Atanassov's] sexual history is based on his self-report alone": Lax Report at p. 10. He nonetheless opined that Mr. Atanassov presented "problems with self-awareness" and possible "victim blaming": at pp. 11-12. Dr. Lax further opined that Mr. Atanassov "presents with some deficits with coping skills", particularly with reference to his past drug use: at p. 11. Dr. Lax opined that "it is likely he has a sexual preference for early post-pubescent girls", but that this "does not appear to be an exclusive preference": at p. 11. Dr. Lax concluded that (at pp. 12-13):

[Mr. Atanassov] is likely at increased risk of sexually inappropriate behaviour with underage early post-pubescent girls if he returns to an environment with less supervision and no work obligations, if he returns to drug use, if he returns to similar sexually promiscuous behaviour, [and] if he has access to girls that age, such as could occur via social media or locations where girls that age frequent.

- [42] As for Dr. Bartel, his overall opinion, stated briefly, is that Mr. Atanassov presents a low or low-to-moderate risk of reoffending, depending on the assessment tool used: see Bartel Report at paras. 31 and 35. Dr. Bartel opined that the primary risk factors are, inter alia, Mr. Atanassov's relatively young age, apparent failures to abide by bail conditions, prior history of substance misuse, and early termination of therapy, which he commenced with Dr. Dassinger after his arrest. Dr. Bartel concluded as follows (at paras. 30 and 36):

Regarding a potential sexual disorder or paraphilia diagnosis, Mr. Atanassov does not appear to present with any paraphilic disorder, in other words, a pattern of recurrent, intense, sexual urges, fantasies, or behaviours that involve deviant or illegal sexual conduct.

Regarding the index offence, this appears to be an anomaly and likely came about due to a confluence of a small subset of factors, the primary of which was engaging in frequent casual sexual encounters indiscriminately. I do not believe that Mr. Atanassov was predatory in the commission of the offence. In other words, I don't believe he was specifically looking for or targeting young teens for sexual encounters.

[43] I acknowledge at this stage that the Crown primarily relies on the Lax Report and challenges various aspects of the Bartel Report. Conversely, counsel for Mr. Atanassov rely on the Bartel Report and strongly take issue with aspects of the Lax Report. I have considered the parties' detailed submissions on this subject, but will not canvass them at length. The aspects of the Bartel Report and the Lax Report that I find most useful in crafting a fit sentence are those portions that provide Mr. Atanassov's own comments about and insights into his offences. As well, although they express themselves differently, and at times refer to different materials in formulating their opinions, I find that Dr. Bartel and Dr. Lax generally agree on Mr. Atanassov's relevant history, his present circumstances, his sexual proclivities, and his overall risk of recidivism, as well as the factors that may elevate or reduce that risk.

## Letters of Support

[44] The court was provided three letters in support of Mr. Atanassov. The letters are from: Anelia Kostadinova, Mr. Atanassov's mother; Desirae Connors, Mr. Atanassov's sister-in-law; and Samuel Mitchell, Mr. Atanassov's friend.

[45] These letters indicate that Mr. Atanassov continues to benefit from the steadfast emotional and financial support of his family and close friend. I take from the letters that Mr. Atanassov's support network understands the seriousness of his offences and is committed to assisting in his rehabilitation. The letters also speak to the painful circumstances brought on by Mr. Atanassov's offences, which were compounded by the tragic passing of his brother, David, in 2023. I note that Mr. Atanassov's parents attended the sentencing proceedings.

## Positions of the Parties

[46] As mentioned earlier, the Crown submits that an appropriate sentence for Count 1 is five years' imprisonment, followed consecutively by a sentence of four years' imprisonment for Count 2. The Crown suggests a global sentence of eight years' imprisonment, to give effect to the totality principle.

[47] The Crown characterizes Mr. Atanassov's offences as morally repugnant and emphasizes that, pursuant to s. 718.01 of the Code, denunciation and deterrence must be given primacy in his sentencing. They refer to Friesen, as well as subsequent appellate consideration of Friesen, for the general principles that govern the sentencing of Mr. Atanassov: e.g., *R. v. Williams*, 2020 BCCA 286; *R. v. Galatas*, 2020 MBCA 108; and *R. v. Sinclair*, 2022 MBCA 65.

- [48] The post-Friesen appellate decisions cited by the Crown provide important guidance on the general principles to be drawn from Friesen, and demonstrate how those principles are properly applied. However, the Crown does not suggest that the cases are factually similar to this case, and indeed the circumstances of the offences and offenders in these decisions are clearly distinguishable from the circumstances of this case.
- [49] With reference to Friesen, the Crown emphasizes that the potential and actual harm flowing from Mr. Atanassov's offending is significant. In the Crown's submission, the potential for L.B. and N.G. to suffer extreme psychological harm as a result of being sexually abused should have been obvious to Mr. Atanassov and would have been obvious to anyone. As mentioned earlier, the Crown advises that as a result of Mr. Atanassov's offending L.B. has experienced anxiety and depression, turned to using drugs and alcohol, lost friendships, and became a social pariah among her peer group.
- [50] As well, the Crown suggests that Mr. Atanassov is an unreliable historian who appears to lack any insight into the harm he caused or the inherent wrongfulness of his actions. The Crown says that Mr. Atanassov's comments to Dr. Lax and Mr. Nicholson appear to minimize his role in the offences, and demonstrate a degree of victim blaming. In the Crown's words, Mr. Atanassov's lack of accountability should be considered in crafting a fit sentence.
- [51] Counsel for Mr. Atanassov submit that a global sentence of 3.5 years' imprisonment is appropriate, consisting of 3 years for Count 1 and six months for Count 2. They say that once Mr. Atanassov receives credit for the time he has already spent in custody, such a sentence would permit the imposition of an order of probation.
- [52] Counsel for Mr. Atanassov refer to a number of cases which they say are factually related to this case, including: *R. v. C.K.*, 2023 BCCA 468 [C.K.]; *R. v. G.J.M.*, 2024 BCCA 82 [G.J.M.]; *R. v. B.L.*, 2024 BCPC 142 [B.L.]; and *R. v. Hooper*, 2024 BCSC 2177 [Hooper]. I will return to these authorities in my discussion of parity, below.
- [53] Counsel for Mr. Atanassov rely on the Bartel Report. They emphasize Dr. Bartel's opinions that: Mr. Atanassov does not present with any paraphilic disorder; does not present "sex-offence specific risk factors", like an escalation in sexual offending; and ultimately presents a low or low-to-moderate risk of sexual reoffending.
- [54] Finally, counsel for Mr. Atanassov submit that his sentence ought to be informed by several collateral consequences that he has suffered as a result of these proceedings. In particular, they refer to the fact that Mr. Atanassov was in custody when his brother passed away, depriving him and his family of an opportunity to grieve together. They also refer to the fact that these proceedings have garnered significant negative media attention, and Mr. Atanassov's report that, shortly after his arrest, he was assaulted in public by three or four people who recognized him from the news. I note that Mr. Atanassov reports also suffering assaults while in pre-trial custody. I further note that the Crown did not challenge Mr. Atanassov's assertions regarding these events.

## Governing Legal Principles

- [55] Sections 718 to 718.2 of the Code set out the fundamental principles and purposes to be considered in sentencing.
- [56] Section 718 of the Code provides that the fundamental purpose of sentencing is "to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions", with reference to six objectives. These objectives are: denunciation of unlawful conduct and its harm; deterrence of the offender and other persons from committing offences; separation of offenders from society, where necessary; assistance in the rehabilitation of offenders; provision of reparations for harm done to victims or to the community; and the promotion of a sense of responsibility in offenders and acknowledgement of the harm done to victims or to the community.
- [57] In all cases, pursuant to s. 718.1 of the Code, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: see *Friesen* at para. 30; *R. v. Parranto*, 2021 SCC 46 at paras. 11-12 [*Parranto*]; and *R. v. Bissonnette*, 2022 SCC 23 at para. 50.
- [58] As well, s. 718.2 of the Code sets out a number of specific principles that a court must take into consideration in sentencing. One important principle is that 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(a).
- [59] I note that while the age of a victim is an essential element to both the offences of sexual interference and child pornography, the fact that Mr. Atanassov abused children under the age of 18 in committing these offences remains a statutory aggravating factor: Code, s. 718.2(a)(ii.1); see *R. v. S.C.W.*, 2019 BCCA 405 at paras. 34-36, leave to appeal to SCC ref'd, 38403 (28 March 2019) [*S.C.W.*]. L.B.'s and N.G.'s specific ages at the time of the offences, and the impact that those ages should have on Mr. Atanassov's sentence, are addressed below.
- [60] Returning to the general principles of sentencing, another important principle is parity of sentence, which requires the sentence imposed to be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances: Code, s. 718.2(b). However, sentencing is ultimately an individualized assessment--one that requires the court to weigh the objectives of sentencing in a manner that best reflects the circumstances of the case and offender before it: *Parranto* at paras. 11-12; *R. v. Nasogaluak*, 2010 SCC 6 at para. 43.
- [61] Finally, s. 718.2(c) of the Code outlines what is referred to as the totality principle. The principle applies in circumstances where consecutive sentences are imposed, and requires that the combined sentence should not be unduly long or harsh. I return to the totality principle below.

## Sentencing for Sexual Offences Against Children

- [62] Both offences for which Mr. Atanassov is to be sentenced involve the sexual exploitation of children. Accordingly, pursuant to s. 718.01 of the Code, the sentences imposed on Mr. Atanassov must reflect a "primary consideration to the objectives of denunciation and deterrence."
- [63] The leading case on sentencing for sexual offences against children remains *Friesen*. The Supreme Court of Canada in *Friesen* sent a strong message about the profound harms caused by sexual violence against children, and the way that courts must respond to such violence through the sentencing process: see *R. v. J.F.V.D.*, 2025 BCCA 4 at para. 40.
- [64] Justice Martin, writing for the majority in *R. v. Bertrand Marchand*, 2023 SCC 26 [*Bertrand Marchand*], summarized the guidance to be taken from *Friesen* as follows:
- [30] *Friesen* recognized that the focus of the legislative scheme of sexual offences against children has shifted to protect a child's personal autonomy, bodily integrity, sexual integrity, dignity and equality. The Court outlined how sexual offences against children produce profound physical and psychological harms to the most vulnerable members of our society. It was deeply concerned with how the sexual assault of children may produce shame, embarrassment, unresolved anger, a reduced ability to trust and fear that other people would also abuse them (*Friesen*, at para. 57). It set out the disproportionate impact of violence on girls, women, Indigenous persons and other vulnerable groups.
- [31] *Friesen* sends the clear message that sentences for these crimes must account for the far-reaching and ongoing damage sexual violence causes to children, families and society at large, which may take many years to manifest. Consequently, sentences for offences involving sexual violence against children must generally increase to reflect society's modern understanding of such offences and Parliament's choice to increase the sentences associated with these crimes (paras. 3-5).
- [32] *Friesen* sets out a useful method of analysis which places children, and the harm they suffer, at the centre of the discussion. Its message is not limited to offences which include physical contact. Instead, its general framework and lessons can be applied to sentencing other forms of sexual abuse of children. Indeed, its sentencing principles "also have relevance to sentencing for other sexual offences against children, such as child luring" (para. 44; see also paras. 46-47).
- [Emphasis added.]
- [65] The general framework articulated in *Friesen* focuses the sentencing assessment, and in particular the proportionality analysis, on the inherent wrongfulness and the harmfulness of child sexual exploitation. Chief Justice Wagner and Justice Rowe, writing for a unanimous Court in *Friesen*, described the appropriate framework as follows:

[75]

In particular, courts need to take into account the wrongfulness and harmfulness of sexual offences against children when applying the proportionality principle. Accurately understanding both factors is key to imposing a proportionate sentence. The wrongfulness and the harmfulness impact both the gravity of the offence and the degree of responsibility of the offender.

[76]

Courts must impose sentences that are commensurate with the gravity of sexual offences against children. It is not sufficient for courts to simply state that sexual offences against children are serious. The sentence imposed must reflect the normative character of the offender's actions and the consequential harm to children and their families, caregivers, and communities. We thus offer some guidance on how courts should give effect to the gravity of sexual offences against children. Specifically, courts must recognize and give effect to (1) the inherent wrongfulness of these offences; (2) the potential harm to children that flows from these offences; and, (3) the actual harm that children suffer as a result of these offences. We emphasize that sexual offences against children are inherently wrongful and always put children at risk of serious harm, even as the degree of wrongfulness, the extent to which potential harm materializes, and actual harm vary from case to case.

[Heading removed. Emphasis added.]

[66] As made clear in *Friesen*, it is not enough for sentencing judges to simply state that sexual offences against children are serious; they must impose sentences commensurate with the gravity of such offences: *G.J.M.* at para. 1. In practice, this means that "mid-single digit penitentiary terms are normal" and "upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances": *Friesen* at para. 114.

## Analysis

### Mitigating Factors

[67] In terms of the mitigating factors, I have considered Mr. Atanassov's guilty pleas, which indicate his acceptance of responsibility for his actions. His guilty pleas have eliminated the need for the two young complainants to testify in court, which to some extent may provide them with comfort.

[68] Moreover, I had the benefit of hearing from Mr. Atanassov directly when he addressed the Court. Mr. Atanassov sincerely expressed remorse and apologized to all those impacted by his offending behaviour. I accept that Mr. Atanassov feels shame about his offending and regrets the harm that he caused to L.B., N.G., and their families.

[69] It is also relevant to the sentencing assessment that Mr. Atanassov is somewhat youthful, has no prior criminal history, and benefits from the continued financial and emotional support of his family and close friend.

[70] Finally, I have also considered the collateral consequences that Mr. Atanassov and his family have faced as a result of these proceedings. I accept that Mr. Atanassov's case has garnered significant negative media attention, and that he was seriously assaulted in the community and in custody. I also accept that because he was in custody at the time of his brother's death, Mr. Atanassov could not participate in the grieving process with his family, depriving his parents and other loved ones of his care and support at an acutely painful time: see *R. v. Clarke*, 2023 BCSC 853 at para. 20 and *R. v. Habib*, 2024 ONCA 830 at paras. 42-46. However, I remain mindful to place only limited weight on these factors: e.g., *R. v. Suter*, 2018 SCC 34 at 58 (in relation to vigilantism); *R. v. Ewanchuk*, 2002 ABCA 95 at para. 68, leave to appeal to SCC ref'd, 29460 (6 March 2003) (in relation to media attention).

#### Aggravating Factors

[71] I find there are a number of aggravating factors in this case.

[72] First, the ages of L.B. and N.G. at the time of the offences are aggravating. While the age of a victim constitutes an essential element of both sexual interference and making child pornography, age can be an appropriate consideration in sentencing because the "egregiousness of the sexual offence against a child increases as the age of the child decreases": *S.C.W.* at para. 36. This means, in particular, that L.B.'s relatively young age at the time of the offences must factor into the sentences imposed on Mr. Atanassov.

[73] It is also aggravating that with respect to Count 1, Mr. Atanassov sexually interfered with two separate victims, and that in relation to L.B. he did so on multiple occasions. Per Friesen, a pattern of sexual violence that goes beyond an "isolated act" increases the offender's degree of responsibility: at para. 131.

[74] Moreover, it is aggravating that with respect to L.B., Mr. Atanassov engaged in multiple instances of unprotected penile penetration.[1] I remain mindful not to suggest a "hierarchy" of sexual interference acts, and recognize that various forms of sexual touching apart from penile penetration can constitute serious violations of a victim's bodily integrity: Friesen at para. 146. Having said that, I consider it aggravating that by engaging in penile penetration with L.B., Mr. Atanassov not only seriously violated her bodily integrity but also exposed her to additional health risks, including the possibility of physical injury, pregnancy, and sexually transmitted diseases: Friesen at para. 139; *R. v. Nahanee*, 2021 BCCA 13 at para. 28, aff'd 2022 SCC 37; and *R. v. S.S.*, 2023 BCCA 207 at para. 25.

[75] It is further aggravating that Mr. Atanassov supplied both L.B. and N.G. with drugs and alcohol in the context of sexually abusing them. In doing so, Mr. Atanassov clearly exposed L.B. and N.G. to health risks associated with substance use and elevated their vulnerability to being sexually abused by him: see e.g., *R. v. Worth*, 2019 BCSC 2201 at para. 35; *R. v. Qureshi*, 2019 BCCA 273 at para. 8; and *R. v. E.C.*, 2019 ONCA 688 at para. 6.

- [76] Additionally, with respect to Count 2, the nature of the child pornography materials created by Mr. Atanassov is aggravating. The videos recovered from L.B.'s, T.B.'s, and Mr. Atanassov's cellphones depict L.B. fully or partially nude, and include depictions of her being subject to highly explicit and intrusive sexual acts.
- [77] The number of child pornography materials created by Mr. Atanassov is also somewhat aggravating. Video recording L.B. in a sexually explicit manner was not a single, isolated incident.
- [78] It is further aggravating that, on one occasion, Mr. Atanassov recorded L.B. in a sexually explicit manner in the presence and view of N.G. It is evident that committing an abusive act, such as recording child pornography, in the presence of a "non-participating" young person also causes that person harm and ought to aggravate the sentence imposed for the offence: e.g., *R. v. Golden*, 2009 MBCA 107 at para. 96.
- [79] Finally, it is aggravating that Mr. Atanassov not only created but also disseminated child pornography. It is particularly troubling that Mr. Atanassov forwarded an illicit video to another young person (D.W.), apparently in an attempt to make her jealous. In doing so, Mr. Atanassov exposed an additional child to harm and relinquished control of the video, which unfortunately disseminated throughout L.B.'s peer group and to L.B.'s mother, amplifying the harm caused to L.B. immensely and raising the possibility that the video remains on the internet today.

## Deterrence and Denunciation

- [80] The objectives of deterrence and denunciation must take precedence in relation to both Count 1 and Count 2: Code, s. 718.01. This Court, through the sentencing process, must communicate that society will not tolerate sexual violence towards children, or their sexual exploitation; denounce Mr. Atanassov's conduct; and deter him and like-minded others from engaging in similar conduct in the future.
- [81] Friesen instructs that the sexual abuse and exploitation of children has become more prevalent over time. As can be seen in this case, the advent of social media has provided sexual offenders "unprecedented access" to potential victims: Friesen at paras. 46-47. Courts must respond to these developments by communicating to would-be offenders that the sexual abuse and exploitation of children, whether or not facilitated by the internet, will be met with severe penalties.
- [82] With respect to specific deterrence, although he has demonstrated a gradual development of insight into his offences and the harm that they have caused, I remain concerned about aspects of Mr. Atanassov's insight into his offending. As set out earlier, Mr. Atanassov has expressed views to Dr. Bartel, Dr. Lax, and Mr. Nicholson that appear to blame others for his own actions, and which portray L.B. as a "willing participant" in the offending. Examples include Mr. Atanassov suggesting that:

- L.B. "wanted" to engage in sexual activity with him;
- He did specific sex acts "for her";
- His sexual activity with L.B. was "mutually instigated"; and
- His offending occurred, in part, because L.B. gave him magic mushrooms and because his "parents were not there".

[83] Views such as these serve to minimize Mr. Atanassov's responsibility for his own actions and appear to misunderstand the exploitation and violence inherent to any sexual touching of a child: e.g., Friesen at para. 77, citing *R. v. L.M.*, 2008 SCC 31 at para. 26. Mr. Atanassov must appreciate that children are simply not appropriate sexual partners and are, unambiguously, incapable of consenting to sexual touching or to being filmed in a sexual manner: see *R. v. Pike*, 2024 ONCA 608 at para. 155.

## Rehabilitation

[84] While deterrence and denunciation are of paramount importance because of the nature of the offences, Mr. Atanassov's rehabilitation remains an objective of this sentencing process. I am hopeful about Mr. Atanassov's prospects for rehabilitation. On the totality of the materials provided in this case, I accept that Mr. Atanassov does not suffer from an evident paraphilic disorder and presents a relatively low risk of reoffending. His prospects for rehabilitation would seem to remain good, so long as he continues to benefit from the support of his family and close friend, works towards developing additional insight into his offences, and does not place himself at an elevated risk of reoffending in the future (e.g., by using drugs or engaging in indiscriminate sexual activity).

[85] However, while Mr. Atanassov's efforts to rehabilitate himself must be supported, they do not take precedence over the primary need to denounce and deter his conduct, for reasons discussed above.

## Proportionality

[86] Friesen makes abundantly clear that the sexual exploitation and abuse of children is inherently and evidently grave. Sexual violence perpetrated against children has the obvious potential to cause immense and enduring harm. In many cases, including this one, this potential is unfortunately realized, and the harm ripples beyond the direct victims towards their families, peers, and communities.

- [87] With respect to Count 1, the gravity of the offending is elevated because: Mr. Atanassov victimized two different children; he subjected L.B. to intrusive and repeated sexual touching; and he plied both of his victims with drugs and alcohol. This type of offending inherently speaks to a high degree of moral blameworthiness. I find that Mr. Atanassov's blameworthiness is further elevated by the fact that he supplied L.B. and N.G. with drugs and alcohol despite admitting that both of them had told him they were in high school.
- [88] With respect to Count 2, Mr. Atanassov's offending is particularly grave because he made multiple videos of L.B., which were highly explicit and exploitative. It is also grave that because Mr. Atanassov disseminated one of these videos, the video circulated among L.B.'s peer group, exposing other young people to child pornography and exposing L.B.'s mother to illicit material of her own daughter. As for moral blameworthiness, I find that Mr. Atanassov knew, or certainly ought to have known that in creating these highly explicit materials he was profoundly exploiting L.B.--an exploitation exacerbated by Mr. Atanassov choosing to disseminate one the recordings to another young person.

### Parity of Sentence

- [89] With respect to Count 1, when prosecuted by indictment the maximum sentence for sexual interference is 14 years' imprisonment: Code, s. 151(a). Prior to Friesen the range of sentence for one count of sexual interference in British Columbia was generally one to three years' imprisonment: R. v. Williams, 2019 BCCA 295 at para. 71. The jurisprudence since Friesen has not recognized a new range: R. v. Nystrom, 2023 BCCA 232 at para. 45. However, the effect of Friesen is clearly such that "a substantial penitentiary term is no longer treated as unusual or reserved for rare or exceptional circumstances, even for a first-time sexual offender": C.K. at para. 112.
- [90] With respect to Count 2, the offence of making child pornography also carries a maximum sentence of 14 years' imprisonment: Code, s. 163(2). The range of sentence for the offence appears to be relatively wide, falling generally between three months' to three years' imprisonment. Decisions at the lowest end of this range tend to involve the creation of relatively small amounts of written illicit materials. Cases at the high end of the range often involve offenders who knew the materials they created were exploitative; offenders who occupied a position of trust; or circumstances in which the creation of the illicit materials carried on over a long period of time. See R. v. Harroff, 2024 BCSC 318 at para. 38.
- [91] As mentioned earlier, the parties referred to a number of decisions which they say ought to inform the appropriate sentence for Mr. Atanassov, either because of the similarities or differences between those cases and this one. I have considered the authorities cited by counsel, and will review some of the most helpful decisions now, remaining mindful that sentencing is ultimately an individualized process: Parranto at paras. 12 and 38. I am especially guided by our Court of Appeal's decisions in C.K. and G.J.M., which greatly assist in determining a fit and proper sentence post-Friesen.

- [92] In C.K. the offender frequently sexually interfered with his stepbrother over a several year span. The offender was 20-22 years old at the time, and the victim was 12-14. The offender engaged in grooming behaviour, provided the victim with drugs and alcohol, and threatened the victim not to disclose the sexual activity. The victim would sometimes cry during the incidents. The victim began using drugs to dissociate and forget about the abuse, and was profoundly affected by the offences. See paras. 3, 10, and 20.
- [93] The trial judge imposed a conditional sentence of two years less one day. Our Court of Appeal substituted a sentence of 3.5 years' imprisonment. Justice DeWitt-Van Oosten, writing for the Court, explained that the appropriate sentence in the case would have been closer to five years' imprisonment, had it not been for the offender's "substantial efforts at rehabilitation and the progress he has made". She described the sentence of 3.5 years' imprisonment as falling "at the low end for child sexual offending of the nature and duration that occurred here". See C.K. at para. 8.
- [94] Like Mr. Atanassov, the offender in C.K. perpetrated intrusive sexual acts, plied his victim with drugs and alcohol, was relatively youthful at the time of the offences, had no prior criminal record, and pleaded guilty. However, the offending in C.K. was much more frequent, persisted over four years (at para. 85), involved more extensive grooming behaviours (at para. 10), and represented a severe breach of the offender's position of trust as the victim's stepsibling (at para. 81). Conversely, the offender in C.K. did not make child pornography and, unlike Mr. Atanassov, had expressed remorse directly to the victim prior to the offending being reported to police (at para. 24). The offender's rehabilitation was also "substantial and independently confirmed" (at para. 117), and was likely "sufficient to address his sexual offending" (at para. 118).
- [95] In G.J.M. the offender sexually abused his half-sister for 6.5 years, including by engaging in highly intrusive sexual acts: at para. 5. The abuse began when the offender was 18 and the victim was seven. The offender recorded one incident of sexual touching but claimed to have deleted the video: at para. 10. After the victim confronted the offender, and at the behest of his family, the offender turned himself in to police and admitted to the sexual abuse, although he minimized its degree and duration: at para. 6. He subsequently acknowledged to a psychologist that everything the victim stated had happened: at para. 11. After his offences came to light, the offender made a serious suicide attempt and was diagnosed with a major depressive disorder: at para. 12. The victim suffered serious and ongoing damage due the offending, and the victim and offender's family unit was disrupted: at para. 77.
- [96] The trial judge imposed a global sentence of two years less one day, followed by three years' probation. The Court of Appeal substituted a cumulative sentence of 4.5 years' imprisonment for three counts of sexual interference, followed by six months' imprisonment for a single count of possession of child pornography. See para. 78.

- [97] As in this case, the offender in G.J.M. engaged in intrusive sexual acts, demonstrated a tendency to "rationalize" his offending (at para. 16), created pornographic material of the victim, pleaded guilty, and had no prior criminal record. Unlike this case, however, the offending persisted over a much longer period of time (at para. 77), involved a victim who at the outset of the abuse was only seven years old, and, like in C.K., represented a severe breach of the offender's position of trust. On the other hand, the offender in G.J.M. did not (on the facts presented) provide the victim drugs and alcohol, and appeared to suffer from a long-standing depression, although his mental health struggles did not diminish his blameworthiness: see paras. 19-20, 60.
- [98] Finally, I have also considered Hooper and B.L. in crafting a fit sentence for Mr. Atanasov. Both offenders received cumulative sentences of five years' imprisonment: in Hooper, for two counts of sexual interference of a vulnerable 14 to 15-year-old; and in B.L., for sexual assault and making child pornography of an unconscious 16-year-old.

### Consecutive or Concurrent Sentences

- [99] The parties agree that the sentences for Count 1 and Count 2 ought to be served consecutively. This approach accords with s. 718.3(7)(a) of the Code, which "removed judicial discretion" and "dictated that sentences must run consecutively for certain offences, like child pornography where the offender also commits another sexual offence against that child": Bertrand Marchand at para. 95; see also R. v. Maligaspe, 2023 BCCA 466 at para. 18.
- [100] I note that s. 718.3(7) of the Code must be interpreted and applied harmoniously with the totality principle: see R. v. S.C., 2019 ONCA 199 at para. 17, leave to appeal to SCC ref'd, 38625 (10 October 2019); R. v. Clarke, 2021 NLCA 8 at para. 71; and R. v. T.A.P., 2023 BCSC 316 at para. 189.
- [101] As mentioned earlier, the totality principle dictates that where an offender is convicted of more than one offence and given consecutive sentences for their offences, the sentencing judge must avoid imposing an aggregate sentence that is unduly long or harsh, exceeds the offender's overall culpability, or is so "'crushing' as to be not in keeping with the offender's record and prospects": Code, s. 718.2(c), interpreted in R. v. Somers, 2021 BCCA 205 at para. 13.
- [102] In R. v. Li, 2009 BCCA 85 [Li], the Court recommended a two-stage approach for sentencing an offender convicted of multiple offences (at para. 28):

The first stage is to determine the appropriate sentence for each offence, and decide whether the individual sentences should be made consecutive or concurrent. If consecutive sentences are imposed, then the second stage is to determine whether the sentences, in the aggregate, offend the totality principle. If the sentence, as a whole, is unduly harsh or disproportionate, then the length of the individual sentences should be adjusted in order to arrive at an appropriate global sentence.

[103] Per the comments in Li, I will now determine the appropriate sentence for each offence. I will then consider the application of the totality principle to the discrete sentences imposed for each count.

### Application of the Legal Principles to the Offences

[104] Having considered the governing sentencing principles, the relevant mitigating and aggravating factors identified earlier, the potential and actual harm caused to L.B. and N.G., the gravity of Mr. Atanassov's offending, his moral blameworthiness, and the authorities referenced by counsel, I find that: a fit sentence for Count 1 is four years' imprisonment; and a fit sentence for Count 2 is one year's imprisonment.

### Adjustments to Reflect the Totality Principle

[105] For reasons already discussed, the sentence for Count 2 will run consecutively to Count 1. As such, I must consider whether a global sentence of five years' imprisonment is unduly long or harsh, disproportionate, exceeds Mr. Atanassov's level of culpability, or is so "crushing" so as to not be in keeping with his record or prospects.

[106] As I have said, on this sentencing the paramount objectives are denouncing and deterring Mr. Atanassov's conduct. I believe that only a modest reduction is warranted to give effect to the totality principle. Therefore, I find that a reduction in sentence of six months from the sentence imposed for Count 1 is necessary and sufficient, in the circumstances.

### Disposition

[107] Mr. Atanassov, please stand.

· On Count 1 of the Indictment, the sexual interference of L.B. and N.G., I sentence you to three years and six months' imprisonment.

· On Count 2 of the Indictment, the making of child pornography, I sentence you to one year's imprisonment.

Therefore, your global sentence is four years and six months.

[108] I must now factor into that sentence the credit for Mr. Atanassov's pre-trial detention. He was initially charged and taken into custody on November 17, 2021. He then obtained judicial interim release on December 17, 2021, and remained in the community until breaching his release conditions. He was arrested on the breach allegation on November 11, 2022, and has remained in custody since that date.

[109] Accordingly, as of today Mr. Atanassov has spent a total of 848 days in pre-trial custody. At a rate of 1.5:1, Mr. Atanassov is entitled to a credit of 1,272 days.

- [110] I will apply 365 days of Mr. Atanassov's pre-trial credit to the one-year sentence imposed on him for Count 2. The balance of Mr. Atanassov's pre-trial credit (907 days) shall be applied to the 3.5-year sentence imposed on him for Count 1. The result is that Mr. Atanassov's remaining term of imprisonment for Count 1 is 370 days, or one year and five days.
- [111] The offences of sexual interference and making child pornography are referred to in s. 161(1.1)(a) of the Code. Accordingly, I must also consider imposing on Mr. Atanassov an order of prohibition with one or more of the terms set out in s. 161(1). Counsel did not address the application of this provision to Mr. Atanassov in their submissions. I find that none of the terms set out in s. 161(1) are necessary in this case.
- [112] That said, Mr. Atanassov's adjusted sentence qualifies for a probation order: *R. v. Demeter*, 2022 BCCA 115 at para. 47, leave to appeal to SCC ref'd, 40618 (21 September 2023). The question becomes whether a probation order is appropriate, having regard to the age and character of the offender, the nature of the offence, and the circumstances surrounding its commission: Code, s. 731(1)(b).
- [113] I agree with counsel for Mr. Atanassov that a probation order is appropriate in these circumstances. Mr. Atanassov has developed some insight into his offending, and would benefit from continued programming and counselling. Mr. Atanassov has also benefited from support while in custody relating to substance dependency issues. Finally, Mr. Atanassov has had issues in the past with respecting release conditions imposed on him in these proceedings, including those intended to protect the public. A probation order, which carries with it the risk of criminal penalty for non-compliance, will assist in securing his good conduct after his release from custody.
- [114] The terms of the probation order are as follows:
- (a) You must comply with the probation order for a term of 2 years.
  - (b) You must keep the peace and be of good behaviour.
  - (c) You must appear before the Court when required to do so by the Court.
  - (d) You must report in person to a probation officer within two working days of your release and thereafter as directed by the probation officer.
  - (e) You must provide your residential address and phone number to the probation officer and not change that address or phone number without prior approval of your probation officer.
  - (f) You must not leave British Columbia unless you have the prior written permission of your probation officer.
  - (g) You must not have any contact or communication, directly or indirectly, with L.B., N.G., K.S., or any of their immediate family members.

- (h) You must not go to any place where L.B., N.G., K.S. or their immediate family members live, work, attend school, or happen to be. If you see them, you must leave their presence immediately without any words or gestures.
- (i) You must not have any contact or communication, directly or indirectly, or be alone in the presence of any person under the age of 16 years, with the exception of your niece, E.C.
- (j) You must attend, participate in and successfully complete any intake, assessment, counselling or program as directed by your probation officer.
- (k) You are to abstain from using or possessing drugs as defined in the Controlled Drugs and Substances Act, except as prescribed by a physician.

#### Ancillary Orders

[115] In addition, I am also imposing the following ancillary orders:

- 1) An order, pursuant to s. 487.051(1) of the Code, authorizing the taking of a DNA sample from Mr. Atanassov.
- 2) An order, pursuant to s. 490.012(1) of the Code, requiring Mr. Atanassov to comply with the Sex Offender Information Registration Act, S.C. 2004, c. 10 [SOIRA]. Although Count 1 and Count 2 both contemplate "designated offences" under s. 490.011(1) of the Code, I am not satisfied that the offences demonstrate or form part of a pattern of behaviour showing that Mr. Atanassov presents an increased risk of reoffending by committing a crime of a sexual nature: s. 490.013(3)(b). Accordingly, the duration of the SOIRA order will be 20 years: Code, s. 490.013(4) and 490.013(2)(b).
- 3) An order, pursuant to s. 109(2)(a) of the Code, prohibiting Mr. Atanassov from possessing any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, firearm part, ammunition and explosive substance, for a period of 10 years following his release on parole.
- 4) An order, pursuant to s. 109(2)(b) of the Code, prohibiting Mr. Atanassov from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.
- 5) An order that you must not have any contact or communication, directly or indirectly, with L.B., N.G., K.S., or any of their immediate family members.
- 6) An order, pursuant to s. 743.2 of the Code, that a copy of the Reasons for Sentence, the reports of Dr. Stuart Lax and Dr. Patrick Bartel, and the Agreed Statement of Facts filed in support of Mr. Atanassov's guilty plea, be forwarded to the Correctional Service of Canada.

[116] Counsel for Mr. Atanassov have submitted that in his circumstances it would be appropriate to waive the victim impact surcharges payable in this case: Code, s. 737. Mr. Atanassov has been in custody for more than two years and his prospects of employment have been substantially impacted as a result of these proceedings. I am therefore satisfied that payment of the victim surcharges would cause undue hardship to Mr. Atanassov, and decline to order that they be payed: Code, s. 737(2.1)(a).

[117] Thank you counsel, we may adjourn.

"Devlin J."

[1] While the ASF is silent on the matter, it is apparent from the parties' submissions that they agree the penile penetration was unprotected.

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