

CANADA / JUDGMENT

R. v. B.F.-S.

2026 ONCA 88

COURT

Court of Appeal for Ontario

DECIDED

6 February 2026

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R. v. B.F.-S. Collection Decisions of the Court of Appeal Date 2026-02-06 Neutral citation 2026 ONCA 88 Docket numbers COA-23-CR-0494 Judges Tulloch, Michael H.; Copeland, Jill M.; Madsen, Lene Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. B.F.-S., 2026 ONCA 88[1] DATE: 20260206 DOCKET: COA-23-CR-0494 Tulloch C.J.O., Copeland and Madsen JJ.A. BETWEEN His Majesty the King Respondent and B.F.-S. Appellant Jolene Hansell, for the appellant Amy Rose, for the respondent Heard: January 20, 2026 On appeal from the sentence imposed by Justice Gilles Renaud of the Ontario Court of Justice on December 15, 2022. REASONS FOR DECISION

- [1] The appellant seeks leave to appeal a global sentence of 11 years and 3 months, less credit for pre-sentence custody, imposed on him for sexual interference, invitation to sexual touching, making child pornography,[2] distributing child pornography, possession of child pornography, and two counts of failure to comply with a release order.
- [2] After hearing submissions on behalf of the appellant, we dismissed the appeal with reasons to follow. These are our reasons.
- [3] The offences the appellant was convicted of, following pleas of guilt, were exceptionally grave. The appellant sexually abused his stepson on a regular basis over three-and-a-half years, when the victim was between the ages of four and seven years. The appellant was in a position of trust towards his stepson. The abuse included anal penetration, touching the victim's penis and inviting the victim to touch the appellant's penis, and making the victim perform oral sex on the appellant. The appellant shared pictures of the victim performing sexual acts on him on the internet on KIK Messenger.
- [4] In 2020, by the terms of a release order imposed in relation to unrelated child pornography charges, the appellant was prohibited from having any contact with anyone under the age of 16 years, except in the presence of his surety or an adult aware of the charges. Despite that prohibition, the appellant continued to be alone with and sexually abuse the victim for another ten months. In addition to child pornography involving the victim, the appellant possessed on his cell phone child pornography photos and videos depicting male and female children between three and eight years of age performing sexual acts with adults, including being subjected to intercourse.

- [5] The sentencing judge apportioned the global sentence of 11 years and 3 months as follows: Offence and count number Sentence imposed Consecutive or concurrent Sexual interference, count #6 9 years Invitation to sexual touching, count #5 9 years concurrent to count #6 Making child pornography, count #8 27 months[3] consecutive to count #6 Possessing child pornography, count #3 12 months concurrent to count #8 Distributing child pornography, count #4 12 months concurrent to count #8 Failure to comply with a release order, count #1 2 years concurrent to count #6 Failure to comply with a release order, count #1 on separate information 2 years concurrent to count #6
- [6] After accounting for 986 days credit for pre-sentence custody to be deducted from the total sentence of 11 years and 3 months, the remaining sentence from the date sentence was imposed was 8.5 years.
- [7] An appellate court may only intervene to vary a sentence imposed if the sentence is demonstrably unfit or the sentencing judge made an error in principle that had an impact on the sentence. Errors in principle include an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor: *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at paras. 11-12, 39-40 and 44-51; *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424, at para. 26.
- [8] The appellant argues that the trial judge erred by factoring in credit for pre-sentence custody, pursuant to *R. v. Summers*, 2014 SCC 26, [2014] 1 S.C.R. 575, in assessing a fit sentence. In other words, the appellant argues that the sentencing judge effectively increased the sentence he imposed in order to arrive at an appropriate sentence after applying Summers credit, thus denying the appellant the benefit of credit for time spent in pre-sentence custody.
- [9] This ground of appeal has no merit. The appellant bases it on one line in the sentencing judge's lengthy reasons. The reasons as a whole are clear that the sentencing judge was of the view that a fit sentence was a totality of 11 years and 3 months (after accounting for 9 months Duncan credit). He then gave Summers credit at a rate of 1.5:1 for the time the appellant spent in pre-sentence custody. There is no error in how the sentencing judge dealt with credit for pre-sentence custody. We address in the next ground the fitness of the overall sentence.
- [10] The appellant argues that the global sentence of 11 years and 3 months is excessive in comparison to sentences imposed in similar cases. The appellant characterizes this ground of appeal as an issue of parity with the sentences imposed in similar cases, but it could equally be characterized as an issue of whether the sentence is unfit.
- [11] We would not interfere with the sentence imposed. Although the nine-year concurrent sentences for the sexual interference and invitation to sexual touching counts are at the high end of the range set in *Friesen*, the sentence is not unfit or inconsistent with the principle of parity.

- [12] As noted above, the offences the appellant was convicted of are exceptionally serious and involved many aggravating factors, including the young age of the victim, the duration and frequency of the abuse, the degree of physical interference, and the fact that the appellant was in a position of trust towards the victim. The sentencing judge appropriately imposed a consecutive sentence for the count of making child pornography, which involved recording the victim being sexually abused and posting it on the internet. These acts by the appellant caused a distinct harm to the victim in addition to the long-term sexual abuse.
- [13] The sentencing judge appropriately gave weight to the appellant's guilty pleas, the fact that he had no prior criminal record, and his prospects for rehabilitation. However, in accordance with the Criminal Code and the jurisprudence, the sentencing judge gave primacy to denunciation and general deterrence. He also appropriately accounted for fitness of the totality of the global sentence by the combination of consecutive and concurrent sentences he imposed. He made no error in the sentence imposed.
- [14] The appellant filed a fresh evidence application outlining the rehabilitative steps and progress he has made in custody, which we have reviewed. While we commend the appellant for taking advantage of the rehabilitative resources available to him while he is in custody, the fresh evidence does not undermine the fitness of the sentence imposed. This is particularly so in the context of sentencing for offences of child sexual abuse, where denunciation and general deterrence are the paramount concerns. The appellant's steps to further his rehabilitation are appropriately considered by the parole authorities.
- [15] The appellant also challenges two ancillary orders imposed by the sentencing judge.
- [16] First, the appellant challenges the orders made by the sentencing judge under ss. 161(1)(c) and 743.21 of the Criminal Code, restricting communication with his stepson and his daughter. The latter was three years old at the time the appellant was sentenced. The appellant seeks exceptions to both orders "in accordance with an Order made in a Family Court proceeding", which would allow a family court to assess the best interests of the children, in the event such an order was sought.
- [17] The s. 161(1)(c) order imposed is not a complete bar to communication with the children; rather, it is a supervision requirement. It prohibits the appellant from having contact or communication with either child, "unless the offender does so under the supervision of a person whom the court considers appropriate." That term of the order lasts until the children are 16 years of age. The s. 743.21 order is a complete prohibition on communication with both children, but is for a more limited duration. By the terms of s. 743.21 of the Criminal Code, it only applies during the custodial period of the sentence. The appellant was sentenced in December 2022. His statutory release date is in approximately two-and-a-half years.

- [18] The appellant's counsel at the sentencing hearing agreed that a non-communication order, without exceptions, was appropriate in relation to his stepson. Regarding his daughter, the appellant made the same arguments now raised to the sentencing judge about an exception to the non-communication order pursuant to a family court order. The sentencing judge rejected them. He found that the appellant having any communication with either child while he was in custody would be harmful to the children.
- [19] We would not interfere with the sentencing judge's considered exercise of discretion in relation to the non-communication orders. As we have outlined, the offences the appellant was convicted of were extremely serious. They will have lifelong impact on the victim. Although none of the counts of which the appellant was convicted involved his daughter, he admitted in the agreed statement of facts in support of his guilty pleas that during an exchange on KIK Messenger, he described sexually touching his then two-year-old daughter. The nature of the offences and the KIK Messenger statement by the appellant about sexually abusing his daughter provided ample basis for the orders made by the sentencing judge. While an exception to a non-communication order for communications made pursuant to a valid family court order may be appropriate in some cases, it is by no means mandatory: *R. v. Hoare*, 2018 ONCA 991, at para. 5.
- [20] The appellant also asks the court to vary the internet restriction under s. 161(1)(d) of the Criminal Code on the basis that it is overly restrictive, and this has interfered with his rehabilitation efforts.
- [21] The record does not support this submission. The s. 161(1)(d) order provides an exception that allows the appellant to use the internet under supervision of a person who has reviewed the transcript of his guilty plea and sentencing and reviewed the exhibits to those proceedings. Although the federal institution where the appellant is currently housed appears to have initially misinterpreted the terms of the internet restriction and denied the appellant access to the internet for some time, the Crown filed an update from the institution showing that the issue has been remedied and the appellant now has supervised access to the internet in the institution.

Disposition

- [22] Leave to appeal sentence is granted, but the sentence appeal is dismissed. "M. Tulloch C.J.O." "J. Copeland J.A." "L. Madsen J.A."
- [1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.
- [2] We use the term "child pornography" because that was the term used in the Criminal Code at the relevant time.
- [3] The 27 months included a 9-month deduction to account for harsh conditions of pre-sentence custody in accordance with *R. v. Duncan*, 2016 ONCA 754.

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