
CANADA / JUDGMENT

R. v. C. H.

2020 BCSC 323

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Supreme Court of British Columbia

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2020 BCSC 323 R. v. C. H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. C. H.,

2020 BCSC 323

Date: 20200221

Docket: 32741

Registry: Cranbrook

Between:

Regina

v.

C.H.

Oral Reasons for Sentence

Counsel for the Crown:

K. J.A. DeJong

Counsel for the Accused:

D. J. White

Place and Date of Hearing:

Cranbrook, B.C.

February 18 and 20, 2020

Place and Date of Judgment:

Cranbrook, B.C.

February 21, 2020

Introduction

- [1] These are my oral reasons for sentence. As such, they are subject to editing for grammar and style when transcribed. The result, however, will not change.
- [2] On June 11, 2019, C. H. pleaded guilty to the offence of possession of child pornography contrary to s. 163.1(4) of the Criminal Code, R.S.C. 1985, c. C-46 (the "Code"). His sentencing was adjourned for the preparation of pre-sentence and psychological reports. The possession of child pornography is a very serious crime.

The Facts

(a) Circumstances of the Offence

- [3] On May 19, 2016 at approximately 7:07 p.m., Elk Valley RCMP officers executed a search warrant at the residence of C. H. A laptop computer owned by C. H. was searched and it was found to contain items that met the definition of child pornography as set out in the Code.
- [4] A further forensic examination of the same laptop computer was conducted by a recognized RCMP expert. There were six videos on the laptop computer that contained child pornography as set out in the definition of the Code.
- [5] C. H. knew about and had control of the six child pornography videos on his laptop computer on May 19, 2016. The six videos constituting child pornography were downloaded from the internet. The videos depicted fully nude female and male children between the ages of 10 to 14 years engaging in a range of sexual activity. The activities included fellatio to sexual intercourse with each other and in some cases with an adult male. Other videos showed fully nude females that appeared to be between the ages of 11 to 14 years masturbating on a bed. In other videos, female children are posing nude.
- [6] There is case authority that a sentencing judge should review the totality of the evidence, including viewing the images of the child pornography that depict the crime: *R. v. Swaby*, 2017 BCSC 2020 at para. 109 [Swaby BCSC]. Both Crown and defence counsel agreed that the Agreed Statement of Facts accurately sets out the activities depicted on the videos and that the sentencing judge does not need to review these pornographic videos. It was on this basis that I did not request a viewing of the subject videos.

(b) Circumstances of the Offender

- [7] C. H. is 54 years old with no criminal record. He grew up in Seattle with four older brothers. He described his family home as normal, with his mother a homemaker and his father a welder. He described his father as an alcoholic, but this did not impact his family negatively. His parents stayed together. His family moved to the Lower Mainland for his father's work.
- [8] C. H. left home when he was approximately 18 years old. He married his first girlfriend a few years later. The couple ultimately moved to Fernie to raise their family. They had three children together: a daughter and two sons. In approximately 2011, the couple separated and the three children lived primarily with their mother. C. H. found a residence specifically for single parents and his daughter moved in. Eventually, both sons moved in and his daughter moved out.
- [9] After the offence was made public, C. H. left Fernie and moved to [content redacted]. He is currently living in [content redacted] with his two sons.
- [10] C. H. has completed high school, a culinary training program, and he previously worked as a chef/cook. He used to work as a full-time warehouse worker, but he has stopped working due a recent carpal tunnel syndrome diagnosis. He also suffers from other physical health challenges, including rheumatoid arthritis in his knees and neck, gout, and sleep apnea.
- [11] C. H. reported to Dr. Burnett, the author of the Pre-Sentence Psychological Assessment dated November 23, 2019, that the offence occurred within the context of a major depressive episode. He described felling apathetic, depressed, hopeless, and self-destructive at the time of the offence. He denies being attracted to children and claims that he fell into downloading child pornography when following pop-ups. He realized he had "crossed the line" with the materials he was possessing and he had decided to stop prior to his arrest.
- [12] This is not a case in which C. H. inadvertently came into possession of a child pornography video, possessed it for a short period of time, and then destroyed it. C. H. searched and downloaded six videos depicting vile activities of child sexual abuse.
- [13] C. H. described a 20-year history of periodic difficulties with low mood and dysphoric affect. He had at least two previous severe major depressive episodes. He experienced anxious distress when he was attending culinary school in his late twenties.
- [14] The results of the Child Pornography Offender Risk Tool, which is designed to assess a current risk for reoffending, places C. H. within the low range of risk to reoffend.
- [15] Dr. Burnett's DSM-5 diagnostic formulation is that C. H. suffers from Major Depressive Disorder, In Full Remission. The doctor noted as follows:

Based on the nature and characteristics of the index offence, along with his self-report and clinical presentation during psychological interviews, it is more probable than not, in my opinion, that C. H. experiences at least some degree of hebephilic sexual interest. Indeed, while it appears that C. H. is sexually interested most strongly in postpubescent females, there is some indication of a potential hebephilic sexual interest. As such, a potential DSM-5 diagnosis of Other

Specified Paraphilic Disorder (i.e. nonexclusive hebephilic sexual interest) (302.89) should be further investigated.

[16] C. H. admitted to having masturbated to hebephilic stimuli on occasion.

[17] Counsel agreed that hebephilic interest means a sexual preference for children in early adolescence, between ages 11 and 14.

[18] A Pre-Sentence Report ("PSR") dated November 21, 2019, provided some further insight regarding the offence. The author of the PSR noted that C. H. advised he turned to pornography as a way to cope with his poor mental health and to distract him from his problems. He would typically view the pornography for a couple of hours on the weekend.

[19] The PSR author reports that C. H. is willing to attend treatment and programming specific to individuals who have committed sexual offences.

(c) Impact of the Offence on the Victim and the Community

[20] There are no victims that provided any victim impact statements due to the nature of the offence. That does not mean there are no victims. The victims are the children who are depicted in the downloaded videos that C. H. chose to access. Those children have no voice in this proceeding, but their voices should not be ignored. The very act of downloading such videos fuels the child pornography industry, which C. H. has chosen to be a part of.

[21] The comments of Hicks PCJ in R. v. S.D.M., 2015 BCPC 112 at para. 49, best capture the harm caused by the possession of child pornography:

Children are victimized in the most brutal and intrusive way at every stage of the child pornography continuum; from the grooming to the undressing, to the posturing, to the exposure, to the forceful intrusion into their most private places, to the physical force and restraint of the child, to threats and physical violence, and to the emotional struggle many of these children will endure over a lifetime. There is a concern that this offending against children is increasing and that the easy ability to circulate this material over the internet is encouraging that growth. Once these images are introduced to the internet, there is no ability to control where they appear, what use is made of them, how often they are re-sent and viewed. Those who possess, view, chat about and exchange child pornography provide the encouragement and the audience for those who would abuse children in order to produce that content. Thus the emphasis on deterrence and denunciation as the primary sentencing objectives in cases involving those who possess and circulate this material.

Principles of Sentencing

[22] Section 718 of the Code provides that the fundamental purpose of sentencing is "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". This purpose is achieved by imposing sentences which have one or more of the following objectives:

- (a) denouncing unlawful conduct and the harm done to victims or the community caused by the unlawful conduct;
- (b) deterring the offender and other persons from committing offences;
- (c) separating offenders from society, where necessary;
- (d) assisting in the rehabilitation of offenders;
- (e) providing reparations for harm done to the victim and to the community; and
- (f) promoting a sense of responsibility in offenders and acknowledgment of the harm done to the victim and to the community.

[23] Section 718.01 of the Code directs that in cases involving the abuse of children, the court must give primary consideration to the objectives of denunciation and deterrence of such conduct. The provision reflects the gravity of all offences involving the abuse of children, including the possession of child pornography.

[24] Section 718.1 of the Code provides that the "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender." Part of implementing a proportionate sentence requires that an offender not be punished more than is necessary in the circumstances: *R. v. Nasogaluak*, 2010 SCC 6 at para. 42.

[25] Section 718.2(a) of the Code stipulates that when imposing a sentence, the court shall take into consideration any relevant aggravating and mitigating circumstances related to the offence or the offender and increase or decrease the sentence accordingly.

[26] A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances: s. 718.2(b) of the Code.

[27] Section 718.2(d) of the Code provides that "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances". Similarly, s. 718.2(e) provides that all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders.

Positions of the Parties

[28] The parties agree that there is no longer a mandatory minimum sentence for the offence of possession of child pornography proceeding by way of indictment. It was struck down as unconstitutional: *R. v. Hamlin*, 2019 BCSC 2266 at para. 34.

[29] The Crown seeks an 8-month custodial sentence. The Crown says that this is close to the low end of the sentencing range identified by the Court of Appeal for possession of child pornography, relying on *R. v. Alexander*, 2019 BCCA 100.

- [30] The appropriate range for a first time offender for the charge of possession of child pornography was addressed in Alexander at para. 23:
- [23] The judge then drew these conclusions:
- [57] I find that the particular circumstances of Mr. Swaby are quite different from that of Mr. Alexander. Furthermore, I do not find that the principles of denunciation and deterrence would be given adequate voice by way of a CSO for Mr. Alexander. Based on my review of the case law I agree with the statement of Mr. Justice Marchand in [Swaby BCSC] that the appropriate range for a first time offender with a collection of pornography similar to that of Mr. Swaby's would be a jail sentence of 6 to 15 months. I do not find anything in the particular circumstances of Mr. Alexander or the circumstances of his offence which would reduce his moral blameworthiness below that range.
- [Emphasis added by the BCCA.]
- [31] The Court of Appeal noted further at paras. 37 to 39:
- [37] I agree with the Crown that the judge's review of recent and relevant sentencing authorities, including Swaby BCSC, was extensive. It properly reflected society's evolving understanding of the harmfulness of child pornography. The judge carefully considered all relevant mitigating and aggravating factors on sentence. He concluded the appropriate range for a first-time offender would be a jail sentence of six to 15 months. The appellant has not provided any submissions or authorities challenging this range, nor has he established, in my view, that the sentence imposed was demonstrably unfit.
- [38] Moreover, the range identified by the sentencing judge is not materially different from the broad sentencing range of four months to two years' imprisonment provided in *R. v. R.L.W.*, 2013 BCCA 50 at paras. 21 and 49.
- [39] At sentencing, the appellant asserted a CSO was a fit sentence for him as the facts of this case are analogous to those in Swaby BCSC. However, the judge accurately distinguished Mr. Swaby's circumstances from those of the appellant. Moreover, recent authorities say incarceration will be necessary in all cases of possession of child pornography, except in exceptional cases, to appropriately emphasize the principles of denunciation and deterrence. I do not consider the present case to be exceptional.
- [32] In *R. v. Swaby*, 2018 BCCA 416 [Swaby BCCA] at para. 66, Justice Bennett noted that even absent a mandatory minimum sentence, a period of incarceration will usually be necessary, even when proceeding summarily.
- [33] The Crown recognises C. H.'s guilty plea and his lack of criminal record. However, the Crown's position is that there are no exceptional grounds for departing from a custodial term within the range set by the Court of Appeal.

- [34] In addition to the custodial sentence, the Crown seeks a 24-month probationary order with certain conditions.
- [35] The defence seeks a 12-month conditional sentence with strict house-arrest conditions followed by two years of probation with strict conditions relating to internet access. In the alternative, the defence submits that 90 days' incarceration, served intermittently, would be appropriate.
- [36] The defence agrees with the probationary conditions suggested by the Crown.
- [37] The defence relies on the following cases to support that this Court can depart from the sentencing range, and that a conditional sentence is appropriate:
- a) R. v. Hamlin, 2019 BCSC 2266: Mr. Hamlin pleaded guilty to possessing and accessing child pornography. His laptop was found to contain a pornographic image of a one to three year old female child and five pornographic video compilations depicting sexual acts by adults on children. He was 56 years old, self-employed as a carpenter, had positive character references, and had a dated but related criminal record. He was also at a high risk to reoffend. He received a jail sentence of eight months followed by three years of probation.
 - b) Swaby BCCA: Mr. Swaby pleaded guilty to one count of possessing child pornography. He was 23 years old at the time of the offence with no criminal record. He received a four-month conditional sentence order and a two-year term of probation. He was found to possess 400 video files meeting the definition of child pornography, including videos of penetrative sexual activity between adults and very young children, but he had serious intellectual difficulties such that he did not fully understand why the videos were harmful and likened it to watching videos of someone breaking their leg. He had a low risk of reoffending, and a sentence of imprisonment would have been extremely hard on him due to his cognitive impairments.
 - c) R. v. Quested, 2019 BCPC 95: Mr. Quested pleaded guilty to accessing child pornography. He was found to have over 1000 images meeting the definition of child pornography on his computer involving children between the ages of two and nine, sometimes with adult men. He was 73 years old at the time of sentencing, with no criminal record. He worked as an accountant, had strong family support, and was actively involved in the community. He immediately began counselling after his arrest, complied with strict bail conditions, and showed true insight into and remorse for the harm his actions caused. Due to his age and a medical condition, prison would have been particularly difficult for him. He received a 12-month conditional sentence followed by 12 months of probation.
 - d) R. v. Booth, 2019 BCPC 160: Mr. Booth pleaded guilty to one count of possessing child pornography on summary conviction. Police found five images and one video meeting the definition of child pornography. He was 71 years old with no criminal record and had a number of health issues. He was at a low risk to reoffend. He was sentenced to three months in prison followed by 18 months of probation.

- [38] The defence further pointed to three cases listed in Booth which he argues supports the imposition of a conditional sentence:
- [53] In *R. v. Leask* 2013 BCSC 926, a 34-year-old offender was found guilty of possessing 26 child pornography images. The Crown had proceeded by indictment and there was a 45-day minimum sentence that applied. The sentencing judge found that the nature of the images was relatively benign and the quantity of the images was relatively small. The sentence imposed was the minimum of 45 days, to be served intermittently.
- [55] In *R. v. T.J.R.M.* 2016 BCPC 177, the 31 year old offender pled guilty to possessing 82 images and 56 videos of child pornography. The materials included vaginal and anal penetration of very young children. The offender admitted to being addicted to pornography, and in particular to child pornography, which he had been viewing for a number of years. The Crown sought a sentence of six months and the defence sought the mandatory minimum of 90 days. The sentencing judge imposed the mandatory minimum of 90 days.
- [56] In *R. v. M.T.* 2016 BCPC 243, the 49-year-old offender pled guilty to possessing child pornography. The quantity of the materials is not readily apparent from the sentencing decision, although there were at least 4 videos that included sex acts between children and adults. The offender had no criminal record and was determined to be at low risk to reoffend. The Crown sought a sentence of six to nine months while the defence sought the mandatory minimum of 90 days. The court imposed a sentence of 90 days.
- [39] The defence relies on *R. v. Proulx*, 2000 SCC 5, for the authority that conditional sentences are punitive sanctions capable of achieving the objectives of denunciation and deterrence. The defence submits that C. H. is at a low risk to reoffend, he pleaded guilty, he has the support of his family, he was a working and responsible member of the community, and he has shown insight and remorse. He was also dealing with mental health issues at the time and has had to move away from his community in Fernie because he was embarrassed by his shameful conduct.
- [40] The Crown references the following additional cases in their book of authorities in support of their position:
- i. *R. v. Watson*, 2018 BCCA 329: Mr. Watson was sentenced to one year in custody and three years' probation for possessing child pornography. He was a 72-year old retiree with no criminal record and strong family support.
 - ii. *R. v. Prince*, 2018 BCSC 987: Mr. Prince was found guilty of four child pornography-related offences. Between 330-350 images and six to eight videos were recovered, including of young children under the age of 12 and toddlers engaged in sexual acts with adults. He was 26-27 years old at the time of the offences, and 35 years old at the time of sentencing. He had a very traumatic childhood and was himself a victim of sexual abuse. He was also Indigenous, and Gladue factors were considered. He had an unrelated criminal record. Before credit for pre-sentence custody was applied, an appropriate sentence would have been 12 months for the possession charge,

three years for possession for the purpose of distributing, and three years for making available or distributing, to be served concurrently, followed by three years' probation.

iii. R. v. Inksetter, 2018 ONCA 474: Mr. Inksetter was convicted of possessing and making available child pornography. On appeal, he received a global sentence of three and a half years' imprisonment. He possessed an extraordinarily large collection of child pornography, including over 28,000 images and over 1,100 videos. Almost all of the collection involved penetrative and other sexually explicit activity. The offender was 51 years old and he used pornography as a coping mechanism to deal with difficulties in his life. He pleaded guilty and accepted full responsibility, but the Court of Appeal held that the sentencing judge had erred in prioritizing probation at the expense of denunciation and deterrence, leading to an unfit sentence.

iv. R. v. B.J.M., 2019 BCPC 303: Mr. M pleaded guilty for possessing and making available child pornography. Fifty-five images of young females were found, including images he had made himself of two girls he knew. The girls provided victim impact statements. He had no criminal record, a university education, the support of his spouse, and the support of his employer. He was sentenced to eight months' incarceration for the possession charge and 12 months' for the making available charge, to be served concurrently, followed by 24 months' probation.

v. R. v. Mollon, 2019 BCSC 423: Mr. Mollon was convicted of possessing and making available child pornography. He received 15 months' incarceration for the possession charge, which involved a "significant cache" of child pornography possessed over a number of years. He was 50 years old with no criminal record. He had a difficult childhood and also had mild cerebral palsy. He did not seek treatment or counselling and demonstrated a lack of remorse.

Analysis

Aggravating Factors

[41] Although the quantity of the child pornography is not large and as such should not be characterized as an aggravating factor, the egregious nature of what is depicted, including the sexual intercourse by adult males on young girls, cannot be ignored.

[42] The sentencing principles of denunciation and deterrence carry significant weight when crimes involving children are involved, which includes the offence of possession of child pornography. This court has consistently recognized child pornography as a pervasive social problem that affects the global community and its children.

Mitigating Factors

[43] The fact that C. H. pleaded guilty is a mitigating factor. This saved the expense of a full trial and the witnesses' need to testify.

- [44] After listening to C. H., I accept that he is ashamed of his conduct and understands that accessing such child pornography is harmful to the children involved. C. H. advised the PSR author that he is ashamed that he let himself go to this point and deals with the consequences of his mistakes every day. He is also embarrassed for his kids and his family.
- [45] C. H. admits to having mental health challenges, in particular, battling depression for many years. It was during his battle with depression that he accessed the child pornography. For mental health to be a mitigating factor, it must be causally connected to his offending: Swaby BCSC at para. 102. The only expert evidence that supports this is the following comment made by Dr. Burnett:

Underlying anxious and depressive thinking patterns (although subtle) appear to be present. Based on his account during psychological interviews, depressed mood/negative affect likely contributed, at least somewhat, to C. H.'s offending behaviours.

- [46] I am not convinced that this evidence goes far enough to establish that these mental health issues are solely causative of the offences committed. I do accept that these factors likely contributed to his offending behavior and accept this as a mitigating factor.
- [47] C. H.'s willingness to attend for treatment as set out in the PSR is a mitigating factor: Swaby BCSC at para. 97.
- [48] Another mitigating factor is the report from Dr. Burnett that supports that C. H. is at the low end of a risk for future offences, although there are some risk factors that should be the focus of future interventions. I note that since C. H.'s arrest he has been a responsible member of society. My view is that this helps to demonstrate that C. H. presents a reduced risk to the community.
- [49] I do not find that the quantity of child pornography is a mitigating factor. This is particularly so considering the vile nature of the activities depicted.

The Fit Sentence

- [50] The Crown acknowledges that the circumstances of this case call for a sentence in the lower end of the sentencing range for the possession of child pornography. However, this is not an exceptional case, and C. H. should be incarcerated.
- [51] The cases provided by the defence support the proposition that conditional sentences of imprisonment may be appropriate in some cases. However, I am of the view that the individuals in some of the cases cited had circumstances related to their mental or physical health that would have made prison particularly difficult for them. I do not find that to be the case here although I do acknowledge that C. H. does have some health challenges.

- [52] I have reviewed the three cases referenced in the Booth decision that defence pointed out to me. In two of the cases, the nature of the child pornography were less serious. In Leask, the images were described as relatively benign consisting mostly of still images of naked boys and girls with their genitals exposed as a dominant feature. In the M.T. case, none of the videos clips involved genital penetration.
- [53] I note that in the T.J.R.M. case the accused had suffered significant sexual abuse as a young person, grew up in a fractured home environment, and taken into care by the Ministry of Children and Family, at a relatively young age.
- [54] I have considered whether a conditional sentence is appropriate, but in consideration of the nature of this offence and serious need for deterrence and denunciation, and the lack of exceptional circumstances, I am not convinced that it would be. The exploitation and abuse of children, and C. H.'s action in the participation in this abhorrent crime, must be strongly discouraged.
- [55] The harm caused by child pornography was recently recognized and emphasized by the Ontario Court of Appeal in Inksetter at paras. 22, 25:
- [22] Child pornography is a pervasive social problem that affects the global community and its children. In *R. v. Sharpe*, 2001 SCC 2, [2001] 1 S.C.R. 45, the Supreme Court described how possession of child pornography harms children. As Fraser C.J.A. wrote in *R. v. Andrukonis*, 2012 ABCA 148, at para. 29, "possession of child pornography is itself child sexual abuse." The children depicted in pornographic images are re-victimized each time the images are viewed. In amassing, viewing, and making available his vast and terrible collection to others, the respondent participated in the abuse of thousands of children.
- ...
- [25] As Feldman J.A. wrote in [*R. v. D.G.F.*, 2010 ONCA 27], at para. 21, "[o]ver the last two decades, courts have been on a learning curve to understand both the extent and the effects of the creation and dissemination of child pornography over the internet and to address the problem appropriately". Even before these amendments, this court signalled that more significant sentences for child pornography-related offences were appropriate: *R. v. H.(R.)*, 2012 ONCA 593, [2012] O.J. No. 4230; *R. v. Saliba*, 2013 ONCA 660, [2013] O.J. No. 6002.
- [56] I accept the defence's submission that most of the circumstances of the authorities relied upon by the Crown were more serious than C. H.'s case because they involved more serious child pornography offences in combination with possessing child pornography. However, in my view, 90 days would not be a sufficient period of incarceration in these circumstances given the seriousness of the offences, the importance of prioritizing denunciation and deterrence, and the lack of exceptional circumstances to take C. H. out of the usual range.

- [57] I am mindful that sentencing is an individualized process, and that ranges can be departed from where appropriate. I must craft a sentence that provides a just and appropriate punishment for this offender for the crime he committed. However, there is nothing exceptional to reduce C. H.'s moral culpability and blameworthiness. There is no basis to conclude that C. H. lacks the ability to understand just how wrong his conduct was.
- [58] I have also considered the jurisprudence that courts have developed a greater appreciation of the harm caused to children in the manufacture, distribution, and possession of child pornography: *R. v. R.L.W.*, 2013 BCCA 50 at para. 49.
- [59] After considering all of the circumstances in this case, having read the pre-sentence and psychological reports, hearing from C. H., listening to the submissions of the Crown and defence, and considering the jurisprudence referred to above, I find that a fit sentence is in the lower end of the range set out by the Court of Appeal. I am convinced of C. H.'s remorse and that he will not engage in this type of activity in the future. That said, a custodial term is in the interests of justice for the victims of this heinous crime and helps to maintain public confidence in the justice system.

Terms of Sentence

- [60] C. H., please stand. I sentence you to six months in jail.
- [61] I also make a 24-month probationary order with the following conditions. You may be seated as I read out the conditions.
- [62] The conditions of the probationary order are, you must:
- a) Keep the peace and be of good behaviour.
 - b) You must appear before the court when required to do so by the court.
 - c) You must notify the court or the probation officer two days in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.
 - d) You must report in person to a probation officer at the [address redacted] within two business days from your release from custody, unless you have obtained, prior to your release, written permission from your probation officer to report elsewhere. After that you must report to your probation officer as directed by your probation officer.
 - e) You must reside in a residence approved in advance by your probation officer. You must provide your phone number to the probation officer and you must not change your residence or your phone number without written permission from your probation officer.
 - f) You must not go to any public park, public swimming area or community centre where persons under the age of 16 years are present, or can reasonably be expected to be present, or a day-care centre, school ground or playground. The exceptions to this are:

- i. With the written permission of your probation officer.
- ii. In the immediate presence of another adult only after he or she has been provided with a copy of this order.
- g) You must have no contact or communication directly or indirectly with, or be alone in the presence of any person you know to be, or who reasonably appears to be, under the age of 16 years. The exceptions to this are:
 - i. If they are your children.
 - ii. If you have written permission of your probation officer.
 - iii. Incidental contact while attending a business premises, a common area of a building, and while on public transit.
- h) You must not consume any alcohol or intoxicating drugs except in accordance with a prescription.
- i) You must attend, participate, and successfully complete, any intake assessment, counselling, or program directed by your probation officer, which may include, but is not limited to, the forensic sex offender program.
- j) While owning, possessing or using any device capable of accessing any computer network, including the internet:
 - i. You must not delete your browsing history without the permission of your probation officer.
 - ii. You must not access, directly or indirectly, any social media sites, social networks, internet discussion forums or chat rooms, or maintain a personal profile on any such service, including Facebook, Tinder, Instagram, LinkedIn or any similar service.
 - iii. You must not communicate or attempt to communicate with any person you know to be, or who reasonably appears or represents themselves to be under the age of 16 years through a social networking website, instant messaging service, or chat room program.
- iv. Having consented, you must sign a release of information form as will enable your probation officer to monitor your compliance with this term. Any information obtained by the probation officer can be given to a peace officer.
- v. Having consented, you must provide the device and any password used to lock the device to your probation officer upon request, in order for him or her to monitor compliance with this order.
- k) You must not possess any pornographic material or access any pornographic material by electronic means.

- l) You must not possess either personally or through another person any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance, anything that resembles a weapon or firearm, any weapon as defined in s. 2 of the Code or any related authorizations, licences or registration.
- [63] The crime you have been convicted of is a primary designated offence for the purposes of DNA registration. I order you provide a sample or samples for the purpose of registration in the national DNA databank. The samples will be taken from you while in custody.
- [64] Pursuant to s. 490.012 of the Code, I am required to order, and so order, that you comply with the requirements of the Sexual Offender Information Registration Act, S.C. 2004, c. 10, for 20 years.
- [65] Although suggested by the Crown I do not see that a further order under s. 161 of the Code is necessary in your circumstances.
- [66] I am directing that a copy of the transcript of these reasons for sentence be provided and sent to the appropriate correctional authority.
- [67] Those are my reasons for sentence.
- "Forth J."

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