

CANADA / JUDGMENT

R. v. Carlson

2025 BCSC 1173

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1173 R. v. Carlson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Carlson,

2025 BCSC 1173

Date: 20250611

Docket: 111267-19

Registry: Kamloops

Rex

v.

Joel Eric Carlson

Ban on publication of any information that would identify the complainants

in this matter, pursuant to s. 486.4(1) of the Criminal Code

Before: The Honourable Mr. Justice Riley

Reasons for Sentence

Counsel for the Crown:

K. Bouchard

L. Drake

Counsel for the Accused:

L.J. Helps

Place and Date of Hearing:

Kamloops, B.C.

May 20-21, 2025

Place and Date of Judgment:

Kamloops, B.C.

June 11, 2025

Introduction

- [1] Mr. Carlson is before the Court for sentencing. On 20 June 2024, a jury found him guilty of six counts of sexual assault, involving five different complainants. These offences were committed between 2013 and 2018, during which time frame Mr. Carlson was between 20 and 26 years of age. These were very serious sexual offences, punctuated by multiple aggravating features. The offending conduct took place over a number of years, although it is probably fair to say it can all be lumped into two distinct periods. All five victims were significantly impacted, traumatized, by Mr. Carlson's conduct. Each of the offences involved a serious violation of the victim's bodily integrity and sexual autonomy, and some of the counts involved the use of physical force to control or subdue the victim. Against this backdrop, the Crown seeks a lengthy penitentiary term along with a number of ancillary sentencing orders, specifically a DNA order, a sex offender registry order, a firearms prohibition order, a no contact order, and a restitution order for financial losses incurred by one of Mr. Carlson's victims.
- [2] Mr. Carlson does not, for the most part, quarrel with the Crown's characterization of the seriousness of the offences, with the exception of one count where there is some ambiguity in the jury verdict. Mr. Carlson urges the Court not to lose sight of his personal circumstances. He is an indigenous person of Métis heritage. He had a difficult upbringing and faced many adversities. At the time of these offences, he was a young man with no criminal record. After being arrested and charged, he came to grips with his substance abuse problem, which is identified as a root cause of his offending behaviour. Mr. Carlson admits to some setbacks, but he says he has embarked in earnest on the road to rehabilitation. He has taken responsibility for his criminal conduct and the harm to the victims, and begun to address the root causes of his antisocial behaviour. Mr. Carlson accepts that he will receive a penitentiary sentence, but urges the Court not to impose a sentence that is so crushing as to undermine his prospects at rehabilitation. He does not oppose the ancillary orders, with the exception of restitution, which he says will saddle him with debt upon his release from prison and interfere with his reintegration into society.

The Offences

Count 1

- [3] On count 1, Mr. Carlson was found guilty of sexually assaulting C.W., in relation to an incident that occurred some time between 1 January and 31 December 2013, in Abbotsford. To be more specific as to the date, C.W. testified that the incident occurred some time in the fall of 2013. She was 18 years old at the time.
- [4] After going out for the night, Mr. Carlson and C.W. went back to Mr. Carlson's apartment. C.W. had agreed to stay the night.
- [5] Mr. Carlson and C.W. went into the bedroom and C.W. got ready for bed. She said she was willing to have sex with Mr. Carlson, as long as he wore a condom. She made that clear to Mr. Carlson. His response was to laugh. He pushed her down on the bed, face down, and started to have sexual intercourse with her, without a condom. When his penis was already inside of her he said, "Oh my God [C.W.], just let me fuck you". He was holding her down with his hand on her back.
- [6] C.W. resisted. She yelled and banged on the wall, trying to get the attention of Mr. Carlson's mother who resided in the apartment. C.W. heard Ms. Carlson respond, "go to bed, Joel". After that, C.W. gave up and "dead bodied it" while Mr. Carlson continued to sexually assault her. At a certain point she felt Mr. Carlson's hand come off her back. She flipped over and pushed him off the bed, onto the floor.
- [7] Mr. Carlson got up from the floor, again pushed C.W. face down into the bed, and continued to have non-consensual sexual intercourse with her, without a condom. C.W. did not resist any further and waited for the assault to end.
- [8] C.W. provided a victim impact statement describing the significant emotional and psychological harm she suffered as a result of Mr. Carlson's forcible sexual assault upon her. She experienced insomnia, a loss of self-esteem, and body image issues. After the assault, she was fearful of Mr. Carlson, and of running into him or being contacted by him. Having now gone through "years of therapy", C.W. no longer sees herself as a victim. She acknowledges what happened to her and sometimes she gets upset but she has figured out how to process it. She adds that she has forgiven Mr. Carlson and she hopes one day he finds peace.
- [9] C.W. also incurred several thousand dollars of expenses for counselling (and related travel) to deal with the psychological and emotional effects of the incident. C.W. provided receipts and other documentary proof of to verify these expenses, which form the basis of a Crown application for a restitution order. I will return to that issue later in the reasons. For the time being I will simply state that I have no difficulty accepting that C.W. incurred significant financial losses arising directly out of Mr. Carlson's offending behaviour.

Count 5

- [10] On count 5, Mr. Carlson was found guilty of sexually assaulting T.L., some time between 1 March 2018 and 31 May 2018, in Kamloops. T.L. was 20 years old at the time. The evidence of T.L. at trial was that the incident occurred some time in May or June of 2018.
- [11] On the night of the incident, T.L. arranged to meet up with Mr. Carlson at a night club after work. When she arrived, Mr. Carlson was present with a number of other people.
- [12] T.L. ordered a drink. Before even finishing it, she felt unusually intoxicated. She felt nauseous, dizzy, and unsteady on her feet. T.L. told Mr. Carlson she did not feel well and had to leave, but could not drive home. Mr. Carlson offered to let her sleep on his couch. T.L. accepted the offer.
- [13] T.L. described in her testimony how Mr. Carlson helped her to walk from his vehicle into his apartment. He had to help her get down the stairs because she was unsteady on her feet.
- [14] Inside the apartment, T.L. saw Mr. Carlson's mother lying on the couch in the living room. Mr. Carlson and his mother began arguing, although T.L. was unable to recall the details in her trial testimony. She had a vague recollection that it had something to do with rent.
- [15] T.L. was still feeling dizzy and disoriented. She went into Mr. Carlson's bedroom, while Mr. Carlson and his mother continued to argue. She sat down on the bed. She was wearing a t-shirt, jeans, and undergarments.
- [16] T.L.'s next memory, as recounted in her trial testimony, was of Mr. Carlson on top of her, kissing her. She recalled trying to say, "I don't want to kiss you", or, "please don't kiss me", although she was unable to say whether the words came out, given her state of impairment at the time. She did not have control over her body and felt half asleep and overwhelmingly tired.
- [17] T.L. had a distinct memory of Mr. Carlson being on top of her. She could feel the weight of his body. He was over 6 feet tall and she believed he weighed well over 200 pounds at the time. She was 5 foot 7 and weighed about 165 pounds. In cross-examination, T.L. agreed that in her statements to the police she did not mention the distinct memory of Mr. Carlson being on top of her. T.L. had no further memory of what happened that night.
- [18] T.L. awoke the next day at around 6:30 a.m., on Mr. Carlson's bed, on top of the covers. She was wearing a t-shirt that was not hers. She was not wearing her bra, pants, or underwear. Mr. Carlson was sleeping next to her on the bed, on top of the covers, wearing only boxer shorts. When she awoke, she felt confused, nauseous, hung over, and sore. She located all of her clothing except for her underwear. She quickly got dressed, left, and called a cab.
- [19] T.L. got a cab ride back to her car, which was parked outside the nightclub. She did not feel well enough to drive all the way to her house which was some distance from Kamloops, so she went to her sister's house to sleep.

- [20] T.L. testified that after she woke up, she experienced soreness around her vagina. She later examined herself and found a small tear, a few centimeters long, at the base of her vagina. She had previously experienced similar tears after sexual intercourse. T.L. did not go to the hospital for a sexual assault examination, for a reason that certainly makes sense but I do not need to discuss further here; the veracity of her reason was not challenged in cross-examination.
- [21] Although the jury found Mr. Carlson guilty of sexually assaulting T.L., it is not possible to discern the extent of the assault from the verdict alone. The jury clearly accepted T.L.'s evidence as credible and reliable. However, the verdict does speak to whether the assault consisted only of non-consensual kissing as recounted by T.L., or included some more intrusive form of sexual contact inferred from the whole of her testimony.
- [22] The intrusiveness of the sexual assault is a key consideration on sentencing. Given the ambiguity in the verdict on this particular count, I am required to make a finding on this issue. My role as the sentencing judge in these circumstances is governed by s. 724(3) of the Criminal Code, R.S.C., 1985, c. C-46 and the principles set out in *R. v. Ferguson*, 2008 SCC 6 at paras. 17-18. My task is not to reconstruct the logical reasoning of the jury, but rather to make an independent finding that is based on the evidence and is consistent with the jury's verdict.
- [23] The Crown's position is that the evidence establishes beyond a reasonable doubt that Mr. Carlson had non-consensual sexual intercourse with T.L. Mr. Carlson's position is that the evidence does not prove anything more than non-consensual kissing, as recounted in T.L.'s testimony. Mere suspicion that Mr. Carlson's conduct went further than this is not enough to support a finding that there was non-consensual vaginal penetration of any kind, and certainly not sufficient to establish that Mr. Carlson had non-consensual sexual intercourse with T.L.
- [24] There was clearly no consent, as reflected in the jury verdict. The point in dispute is the extent of Mr. Carlson's non-consensual sexual contact with the victim.
- [25] T.L. gave direct evidence that Mr. Carlson was kissing her, without her consent, while on top of her on the bed. She could not remember anything else. The case for finding that Mr. Carlson did anything more than this is circumstantial. The burden is on the Crown to prove beyond a reasonable doubt that Mr. Carlson's sexual assault extended to non-consensual vaginal penetration of the victim.
- [26] There must be no other reasonable inference that arises from or that fits with the totality of the evidence. The circumstantial evidence consists of the following:
- (a) T.L.'s last memory was of Mr. Carlson kissing her, with his full weight on top of her, while she was lying on the bed, fully clothed;

- (b) T.L. awoke on the bed, on top of the covers, wearing only a t-shirt that was not hers. She was not wearing her pants, bra, or underwear;
 - (c) Mr. Carlson was asleep on the bed next to her, in boxer shorts;
 - (d) T.L. was able to find all of her clothes, with the exception of her underwear. She briefly peeked into the bathroom but evidently did not find her underwear in there either;
 - (e) T.L. felt soreness in her vaginal area, and later examined her vagina, finding a small tear, several centimeters in length;
 - (f) T.L. has previously noted similar vagina tears after sexual intercourse. In cross-examination, T.L. clarified that her prior experience with this kind of injury was after consensual sexual intercourse; and
 - (g) From T.L.'s knowledge of anatomy, which is considerable given her occupation, she agreed that the vagina walls are strong and malleable.
- [27] On the totality of the evidence, I am satisfied beyond a reasonable doubt that Mr. Carlson's sexual assault of T.L. included some form of non-consensual vaginal penetration. There is no other rational inference that can be drawn from or that fits with the circumstantial evidence that I have just outlined. The circumstances of her last memory, her subsequent state of undress, and her vaginal soreness and observed injury leave room for no other rational or reasonable conclusion.
- [28] However, the evidence does not prove non-consensual penile penetration. In other words, while the only reasonable inference is that Mr. Carlson caused T.L.'s clothing to be removed and physically penetrated her vagina without consent, the evidence does not establish beyond a reasonable doubt that Mr. Carlson had non-consensual sexual intercourse with T.L.
- [29] With regard to victim impact, T.L. testified at trial that after the incident she felt ashamed and stupid for agreeing to meet Mr. Carlson at the nightclub. She did not want others to find out what had happened to her. She experienced a loss of trust because Mr. Carlson took advantage of her while she was incapacitated. She tried to forget what happened and immersed herself in her work and studies. The hardest thing for her to forget was the feeling of loss of control over what was happening to her.

Counts 6 and 8

- [30] On counts 6 and 8, Mr. Carlson was found guilty of sexually assaulting K.T. on two separation occasions in the spring of 2018, in Kamloops. More specifically, count 6 related to a sexual assault of K.T. on or about 30 March 2018, and count 8 related to a sexual assault of K.T. on 11 May 2018.

[31] Both of these sexual assaults took place at K.T.'s apartment in Kamloops. The backdrop is that K.T. and Mr. Carlson had been in a four year "on again, off again" relationship, which ended some time in February 2018.

[32] The 30 March 2018 offence unfolded as follows:

- (a) Mr. Carlson appeared at the balcony of the apartment, late at night, in an apparent state of intoxication. The balcony is one level up from the ground such that Mr. Carlson had to climb onto it.
- (b) Mr. Carlson said he wanted to apologize and "work on things". K.T. let Mr. Carlson into the apartment because she did not want him to make a scene, or to drive home while impaired.
- (c) K.T. told Mr. Carlson to sleep on the couch. Mr. Carlson disregarded that, went into the bedroom, and went to sleep in K.T.'s bed. K.T. eventually went to bed as well.
- (d) Some time after she fell asleep, K.T. awoke to find Mr. Carlson on top of her. He pinned her down, holding her wrists, and forced himself on her.
- (e) K.T. resisted and tried to fight Mr. Carlson off for about 10 minutes. She used her arms and her legs to try and break free, to no avail. She told Mr. Carlson, "I don't want this", and "no, get off me". When she said no, it appeared to stimulate rather than deter him. Mr. Carlson continued to force himself on her, saying "You're a big dick slut. You want it. You love me."
- (f) Eventually, Mr. Carlson overpowered K.T. and inserted his penis into her vagina. He was not wearing a condom. K.T. stopped resisting, thinking at this point that the less she fought the sooner the assault would be over.
- (g) After sexually assaulting K.T., Mr. Carlson went to sleep. K.T. left the bedroom and went to sleep on the couch.
- (h) K.T. gave testimony at trial about visible injuries she received during the assault. She got a friend to take a digital photograph of a thumb-shaped bruise on her upper left arm. She testified that the bruise lasted about one week. A copy of the photograph was marked as an exhibit at trial.

[33] The circumstances of the 11 May 2018 assault are as follows:

- (a) Mr. Carlson appeared on the balcony, late at night, once again in a state of impairment. K.T. let Mr. Carlson into her apartment, for more or less the same reasons. She was "thinking it would be different this time", and that Mr. Carlson would respect her space.
- (b) K.T. again told Mr. Carlson to sleep on the couch, but he did not listen to her.
- (c) K.T. was unable to recall exactly how she and Mr. Carlson ended up in the bedroom together on this occasion. She recounted that once they were in the bedroom, Mr. Carlson grabbed her and pinned her down on the bed. She told Mr. Carlson no and to get off her, but he did not stop.

- (d) Mr. Carlson proceeded to have forced sexual intercourse with K.T., on the bed. He was not wearing a condom. K.T. did not fight Mr. Carlson at first, feeling that there was no point and simply wanting it to be over.
 - (e) At a certain point during the assault, K.T. screamed louder than she had ever screamed in her entire life. She yelled, "Get off me", "Don't", and "I don't want this".
 - (f) A neighbor was awoken from her sleep by K.T.'s screaming. The neighbor testified at trial that she heard a woman's voice yelling, "stop", "get off" and "no", and then screaming. She phoned the police.
 - (g) As Mr. Carlson's assault of K.T. continued, K.T. spat in Mr. Carlson's face. When he reacted, she was able to free her hands, strike Mr. Carlson, and free herself.
 - (h) K.T. ran into the kitchen, grabbed a frying pan, and held it up to Mr. Carlson, telling him to get out. Mr. Carlson left, although he forgot his wallet and later asked K.T. to bring it to him.
 - (i) The police arrived at K.T.'s door in response to the call from her neighbor. K.T. did not say anything to them about the sexual assault. She was shocked to see them, and also ashamed and did not want to share what happened to her. She thought that if she did not report it she would not have to see Mr. Carlson again.
- [34] K.T. provided a victim impact statement describing how she had become emotionally withdrawn after what Mr. Carlson did to her. She felt ashamed, embarrassed, and unsafe in her own home. She continued to feel traumatized when something reminds her about the sexual assaults. She did not feel safe until she learned that Mr. Carlson had been remanded into custody.

Count 9

- [35] On count 9, Mr. Carlson was found guilty of sexually assaulting T.S., in an incident that occurred some time between 1 August and 10 September 2018, in Kamloops. T.S. was 21 years old at the time.
- [36] The incident occurred at Mr. Carlson's apartment. T.S. was staying the night and she and Mr. Carlson were in bed. She woke up in the middle of the night to find Mr. Carlson between her legs, spreading them apart. Mr. Carlson wrapped her legs around him and began to use his fingers to stretch out her vagina. T.S. told him "no", and that she was tired and had school in the morning. Mr. Carlson continued to manipulate her vagina with his fingers. T.S. found it painful. Mr. Carlson then began having non-consensual intercourse with her. He was not wearing a condom. The assault continued until he ejaculated inside of her. Afterward, T.S. went to the bathroom and she found it painful to urinate. She did not leave until the morning, explaining that even though she felt betrayed by Mr. Carlson, she had no way to get home because she did not drive, it was too late for the bus, and it was much too far to walk.

- [37] With regard to victim impact, T.S. testified that during the sexual assault she felt scared, unsure, guilty, and tired. She trusted Mr. Carlson enough to sleep in his bed and she felt like he betrayed that trust. She told him no and he persisted, without her consent. Mr. Carlson's sexual assault undermined her dignity and self-worth. She subsequently experienced flashbacks of the incident.

Count 10

- [38] On count 10, Mr. Carlson was found guilty of sexually assaulting A.A. The offence occurred in Kamloops on 1 January 2018. A.A. was 18 years old at the time.
- [39] A.A., Mr. Carlson, and others had been out at a bar celebrating the New Year. A.A. told Mr. Carlson several times over the course of the night that she was not interested in sex as she was on her period and she was wearing a tampon.
- [40] After the night's events, Mr. Carlson, A.A., and some others stayed at the apartment of one of the others in the group.
- [41] A.A. changed out of her dress so she could go to sleep. She was wearing a t-shirt, bra, underwear, and sweatpants. She initially went to sleep in a bed but was later asked to move, so she went to sleep on a couch.
- [42] A.A. was asleep on the couch, on her stomach, when she awoke to find Mr. Carlson over her with one leg on the ground and the other on the couch. He was wearing a t-shirt but was naked from the waist down. A.A.'s sweatpants and underwear had been pulled about "halfway down [her] butt". Mr. Carlson's erect penis was touching the bare skin on her lower back, just above her butt.
- [43] A.A. quickly sprang up and turned around into a seated position and asked Mr. Carlson what he was doing. Mr. Carlson responded that she was his girlfriend and he was just trying to "wake [her] up sensually". Mr. Carlson's tone was "defensive" and A.A. did not interpret it as apologetic. A.A. slapped Mr. Carlson in the face.
- [44] A few minutes later, someone called a cab and A.A. left the apartment.
- [45] When asked at trial how she felt about the incident, A.A. testified that at first she did not know how to feel. She questioned herself, because she was Mr. Carlson's girlfriend at the time. Later she felt guilty, sad, and distraught. In cross-examination, A.A. agreed that at some point after this incident, Mr. Carlson apologized for his conduct.

Circumstances of the Offender

[46] I have a fairly detailed picture of Mr. Carlson's personal circumstances, based upon a court-ordered psychological assessment prepared by Dr. Brink, a Gladue report authored by Ms. Pringle, and detailed submissions of counsel. Mr. Carlson also addressed the Court directly at the conclusion of the sentencing hearing; I will return to Mr. Carlson's remarks later in these reasons.

Family Background and Indigenous Heritage

[47] Mr. Carlson was born in 1992, and is now 32 years old. He identifies as Métis, and is of Métis, Cree, and Ojibwe heritage, on the paternal side of his family. His paternal grandmother was Métis, grew up on a reserve, attended an Indian Residential School, and later left the reserve when she married. It appears that the family became largely if not entirely disconnected from its indigenous heritage at that point. Mr. Carlson's father was placed in foster care and abused alcohol and drugs from a very young age.

Turbulent Childhood

[48] After Mr. Carlson's father and mother met and began a relationship, his maternal grandparents did not get on well with his father, who eventually left the relationship, lived on the street, and descended into habitual drug abuse. Mr. Carlson's father died of HIV/AIDS when Mr. Carlson was seven or eight years old.

[49] During their relationship, Mr. Carlson's parents abused alcohol. As noted, Mr. Carlson's father had serious substance abuse issues. There was also domestic violence in the household.

[50] After his parents split up, Mr. Carlson lived with his mother and older sister. They were not well off, and had a precarious housing situation and faced food insecurity. They moved frequently. Mr. Carlson's mother also had sporadic episodes of excessive drinking, though it was not habitual.

[51] Dr. Brink's report also indicates that Mr. Carlson was a victim of sexual abuse, outside the home. Dr. Brink indicates that the trauma from this incident is "unresolved".

Abandonment

[52] When Mr. Carlson was in his mid-teens, his mother formed a relationship with a man who Mr. Carlson recalls was abusive toward both his mother and Mr. Carlson. Mr. Carlson's mother and her partner moved to Vernon and left Mr. Carlson to stay with his older sister. Mr. Carlson felt "abandoned". He did not see his mother for approximately eight months. Mr. Carlson recounted to Ms. Pringle that he was deeply affected by this experience. His sister confirmed that his mother's choice to move away with a new partner, leaving Mr. Carlson behind, hurt Mr. Carlson and had a lasting impact on him.

Education

[53] Mr. Carlson was diagnosed with dyslexia at a young age and struggled in school. He also struggled socially because of the family's poverty and frequent changes in residence. Mr. Carlson stopped attending school regularly in grade 6 and made an attempt at home schooling. He abandoned his studies entirely in grade 9, although he later obtained his high school diploma via an adult education program.

Substance Abuse

[54] Mr. Carlson began consuming alcohol at a young age and struggled with alcohol abuse through his teen and early adult years. He was involved in cocaine use for some time, and he took steroids with some frequency during the time that he was working in gyms and as a personal trainer.

Employment and Occupational History

[55] The information placed before me indicates that Mr. Carlson has no difficulty with hard work, although not necessarily in a single occupation or career path. He has worked in a variety of fields or occupations over the course of his adult life, including landscaping, pool cleaning, construction, HVAC, retail services, and at gyms in various capacities including as a personal trainer.

Medical History

[56] Counsel for Mr. Carlson tendered an extract from a medical-legal report documenting that Mr. Carlson had been abusing cocaine and other recreational drugs since at least 2016, when he would have been 18 years old. The same medical legal report refers to hospital records from an incident in April 2018 when Mr. Carlson obtained treatment for injuries after he had been punched in the face.

[57] Dr. Brink's report notes that Mr. Carlson was involved in two separate motor vehicle accidents in 2018. The first accident was in June 2018. Mr. Carlson was taken to the hospital, but chose to leave and go to a party where he drank and consumed drugs. The second accident was in November 2018, and left Mr. Carlson with ongoing neck pain, back pain, and headaches.

Attitude toward the Offences

[58] The offences span a time frame when Mr. Carlson was a young adult. The first offence occurred when he was 20. The last of the six offences was committed when Mr. Carlson was 26 years old. Throughout this period of his life, Mr. Carlson generally lived in apartments with his mother, although there were several stints when Mr. Carlson was in long term cohabitational relationships.

- [59] Mr. Carlson became acquainted with three of the victims (T.L., T.S., and A.A.) through social media or dating apps.
- [60] Mr. Carlson's offending behaviour was often accompanied by, or occurred during times when he was abusing alcohol and cocaine. Substance abuse is clearly a risk factor for Mr. Carlson's sexual offending.
- [61] With regard to his current attitude toward the offences, Mr. Carlson told the author of one of the reports that he was disgusted and ashamed of himself for his conduct in relation to a number of the assaults. He acknowledged some of the offences and admitted that his conduct was clearly wrong, although he claimed to have poor memory of the details because of his intoxication (count 1, involving CW; counts 6 and 8, involving K.T.; count 10, involving A.A.). There was one offence (count 5, involving T.L.) which he did not deny but claimed to have no memory of the events because of substance abuse. With respect to one offence (count 9, involving T.S.), Mr. Carlson claims to have been under the belief at the time that the sexual activity was consensual, although on the victim's evidence, which the jury clearly accepted, there was no viable defence of honest but mistaken belief in communicated consent.

Criminal Record

- [62] Apart from the six counts of sexual assault in the instant matter, Mr. Carlson was prosecuted and found guilty of sexual assault in relation to a separate incident that occurred in August of 2020. In that incident, Mr. Carlson met the victim online and arranged to see her in person. He had been drinking. He and the victim went to Mr. Carlson's truck where they engaged in consensual kissing, before Mr. Carlson touched the victim sexually without her consent. That was Mr. Carlson's first conviction for a sexual offence, or for any offence for that matter. On 30 June 2022 Mr. Carlson was sentenced by Judge Guild of the Provincial Court to serve a 12 month conditional sentence order (CSO) in connection with that matter.

Community Supervision with Mixed Results

- [63] Mr. Carlson was initially released on bail on conditions that he participate in a residential supervision and treatment program called "Adult and Teen Challenge" in Chilliwack. When sentenced by Judge Guild, this bail order was replaced with a CSO requiring Mr. Carlson to continue in the Adult and Teen Challenge Program.
- [64] Mr. Carlson had mixed success at Adult and Teen Challenge. He participated in the programming and was initially considered to have a positive attitude. He was successful enough that in July 2022, he was being considered for a managerial position within the organization. However, Dr. Brink's report also indicates that over time, a pattern of conflict developed between Mr. Carlson and the program staff, arising from Mr. Carlson's perception that the restrictions on his liberty and limited access to the community were unfair. At least one staff member at Adult and Teen Challenge described Mr. Carlson as passively

manipulative. Another report indicated that while Mr. Carlson spoke highly of the program and some of its contributors, he presented as if he was seeking praise, and was also inclined to push boundaries and complain about unfair rules and restrictions.

- [65] These observations are consistent with reports from Mr. Carlson's CSO supervisor, Ms. Roth, who characterized Mr. Carlson's attitude at the time as "entitled" and "manipulative". Ms. Roth's reports document a series of interactions with Mr. Carlson in which he was seeking to reduce his CSO restrictions. Mr. Carlson did not seem to grasp that the CSO was meant to impose restrictions on his liberties because it was a form of jail sentence in the community.
- [66] In March 2023, Ms. Roth contacted Mr. Falk, the administrator of Adult and Youth Challenge, enquiring into the status of Mr. Carlson's performance. Mr. Falk reported that Mr. Carlson had left the Adult and Teen Challenge facility twice, without permission. Mr. Carlson had also been working for a third party employer, off site, and not following the rules of the program. There were indications that Mr. Carlson was attempting to manipulate staff and other participants, and he was eventually banned from being alone with other participants. For all of these reasons, Mr. Falk was considering kicking Mr. Carlson out of the program. (I pause from my chronological review of Mr. Carlson's post-offence circumstances to note that, despite his problems while in Adult and Teen Challenge, he did ultimately complete the program. Mr. Falk confirmed this in a letter to the Court, which gave a positive, albeit brief assessment of Mr. Carlson's character.)
- [67] Returning to the post-offence chronology, on 13 April 2023, Mr. Carlson was arrested for breach of his CSO terms by, among other things (i) being absent from the facility on two occasions without permission, (ii) failing to advise the CSO supervisor of his change in employment, and (iii) failing to report to his CSO supervisor when directed. Mr. Carlson was later released on bail with a requirement to reside at another privately-run residential treatment facility, which I will discuss in a moment. With regard to the status of his CSO, on 9 June 2023, Mr. Carlson was found to have breached the terms, the conditional sentence was terminated, and he was required to serve the balance of his sentence in custody.
- [68] On or about 11 August 2023, having served the balance of his sentence in custody, Mr. Carlson was again admitted to bail in connection with the charges for which he is now being sentenced. This time, Mr. Carlson was released on conditions requiring him to reside at Pathway to Freedom in Surrey. According to Dr. Brink's report, Mr. Carlson did not encounter any non-compliance issues while at Pathway to Freedom, and "did well" at this facility. Among other things, Mr. Carlson: (i) regularly attended church and developed a supportive relationship with a pastor, (ii) attended a total of 17 counselling sessions with a psychologist, Ms. Cruickshank, and (iii) enrolled in a vocational education program for firefighters.

Post-Verdict Remand

[69] On 20 June 2024, after the jury delivered its verdict finding Mr. Carlson guilty of six counts of sexual assault, he was remanded in custody. Mr. Carlson has been held at Kamloops Regional Correction Centre (KRCC) since then. Dr. Brink's report indicates that Mr. Carlson "has not exhibited any problematic behaviour" while in custody. He has abstained from substance misuse, attends AA meetings, and has formed a bond with the KRCC Chaplain. The Gladue Report indicates that Mr. Carlson has also connected with his indigenous roots, participating in smudging and sweat lodge ceremonies when they are available. Counsel for Mr. Carlson advises, based on input from the Chaplain, that Mr. Carlson has been a "model inmate" at KRCC.

Time Spent in Custody

[70] Based on the numbers furnished by counsel, I calculate that Mr. Carlson spent a total of 486 days in custody on this matter (not credited to any other sentence) up to and including the date of the sentencing hearing.[1] To that, I must add a further 20 days from the date of the hearing to the sentencing date, for a total of 506 days in custody. At the statutorily prescribed rate of 1.5:1, Mr. Carlson is entitled to 759 days of credit for pre-sentence custody. This can be converted to 24 months and 29 days, which I would round up to 25 months.

[71] Counsel for Mr. Carlson advises that as a result of a police media release, Mr. Carlson received unwanted scrutiny or attention while in custody for a certain period of time. I am told, and this is not disputed, that Mr. Carlson was threatened or intimidated by other prisoners due to the nature of the charges and the information contained with the police media release. As a result, Mr. Carlson spent several days in protective custody. This is relevant, but in my view not something that warrants any mathematical credit or reduction in sentence.

Psychological Assessment

[72] Dr. Brink's opinion is that Mr. Carlson has (i) an alcohol and substance use disorder, (ii) antisocial personality traits and adult antisocial behavior, which Dr. Brink opines will often moderate with age, and can be targeted in treatment, and (iii) sexual deviance, associated with a pattern of persistence in non-consensual sexual activity despite clear opposition from the victim.

[73] Applying the risk of sexual violence protocol ("RSVP") assessment tool, Dr. Brink identified Mr. Carlson's most significant risk factors as: (i) sexual deviance, (iii) problems with substance abuse, (iii) problems with supervision. Dr. Brink opined that Mr. Carlson is in need of sex offender and substance use programming of at least moderate intensity. This sex offender programming Mr. Carlson requires is not available in the community or in provincial jails. In other words, it is only available through the federal penitentiary system. Dr. Brink added that given Mr. Carlson's indigenous heritage, indigenous programming that

would address his risk-relevant needs would be appropriate if available.

- [74] Based on the submissions of counsel, and the information in Dr. Brink's psychological assessment and Ms. Pringle's Gladue report, the most relevant sex offender programming available through the federal penitentiary system for Mr. Carlson would be either: (i) the Federal Sex Offender Program (a moderate to high intensity treatment program), or alternatively (ii) the Indigenous Integrated Correctional Program Model for Sex Offenders (a high intensity treatment program with culturally appropriate content including input from indigenous elders). These programs are available for offenders who receive penitentiary sentences of four years or more.

Gladue Report

- [75] I have already outlined Mr. Carlson's indigenous heritage, and other aspects of his family background based on information in the Gladue Report. The report documents the intergenerational and contemporary impacts of Canada's colonial policies toward indigenous communities, and goes on to identify how many of the systemic background factors discussed in *R. v. Gladue*, [1999] 1 S.C.R. 698 at paras. 67-68 are clearly present in Mr. Carlson's case. The most noteworthy Gladue factors in Mr. Carlson's case are the following: (a) intergenerational trauma associated with attendance at an Indian Residential School and here I refer to the experience of Mr. Carlson's paternal grandmother, who attended IRS, and then experienced disconnection for the family's indigenous heritage when she married a non-Métis partner and moved off reserve, (b) disconnection from the indigenous community as I have just described, (c) premature death of family and close associations, (d) normalization of substance misuse, (e) familial instability, precarious housing, and poverty, (f) sexual abuse, (g) abandonment, (h) normalization of intimate partner violence, (i) lack of supports in education, and (j) substance misuse.
- [76] The Gladue report outlines many culturally appropriate community supports and programs that can or should be made available to Mr. Carlson upon his release from prison. Because both the Crown and the defence are recommending a sentence well beyond the minimum penitentiary term of two years, I am not going to review any of this community based programming in these reasons. It is important for Mr. Carlson to note that upon his release, he will have access to programs and he is encouraged to take advantage of those programs in a way that allows him to maintain and strengthen the connection to his indigenous heritage, and assists him in reintegrating into the community when he is seeking housing, employment, and other social supports.

Letters of Support

- [77] Mr. Carlson submitted letters of support from a church Pastor (with whom Mr. Carlson met on a regular basis prior to his remand), a number of staff members and volunteers from Adult and Teen Challenge, one of the other attendees at Pathway to Freedom, and the Chaplain at KRCC. These letters reflect that Mr. Carlson is able to form and has formed

positive, meaningful, and supportive relationships. Most of these letters confirm that the authors are aware of Mr. Carlson's current circumstances, including his convictions. These individuals continue to support Mr. Carlson. Some of the letters speak to Mr. Carlson's acceptance of responsibility and his intent to reintegrate and become a productive member of the community.

Mr. Carlson's Remarks to the Court

[78] Mr. Carlson addressed the Court at the conclusion of the sentencing hearing. It is obvious to me that Mr. Carlson gave considerable thought to what he would say, and that his remarks were heartfelt and genuine. They reflect remorse, and at least some degree of acknowledgment of the harm he has caused to his victims. I should add that Mr. Carlson's words in the prisoner's box line up with his actions since the charges were laid against him and more recently since his remand into custody. The prison Chaplain, with whom Mr. Carlson has formed a bond, described Mr. Carlson as a model prisoner during his time at KRCC. Mr. Carlson has participated in programming, has worked in the chapel and with other inmates, and has maintained his sobriety. Mr. Carlson was between 20 and 26 years of age when he committed the offences. He is now 32, almost 33 years old. He has matured, and he has clearly reflected on his misconduct, at least some of the factors that contributed to it, and its effects. All of this is to Mr. Carlson's credit.

Sentencing Positions

- [79] Both the Crown and the defence submit that Mr. Carlson should receive consecutive sentences for the sexual assaults against each of the five victims, with the sentences for the two offences committed against the same victim (K.T.) to be served concurrently to each other, but consecutive to all of the others. However, the parties part company as to the duration of the sentences for each count.
- [80] The Crown says Mr. Carlson's offences were punctuated by multiple aggravating factors. The Crown emphasizes the degree of sexual violence involved, and the significant impact that the offences have had on the victims. Crown counsel says denunciation and deterrence are the most pressing sentencing objectives. The Crown therefore submits that Mr. Carlson should receive jail sentences totalling 14 years. With credit for time spent in custody, this amounts to a penitentiary sentence of 11 years and 11 months.
- [81] Counsel for Mr. Carlson submits that some of the aggravating features cited by the Crown are not present or not as grave as suggested. Counsel accepts that denunciation and deterrence are key sentencing objectives given the seriousness of the crimes, but also urges the Court to consider rehabilitation in light of Mr. Carlson's indigenous heritage, and the progress he has made since the charges were laid. Counsel urges the Court not to impose a crushing sentence. Defence counsel submits that Mr. Carlson should receive sentences totalling 7 years and 7 months, less credit for time in custody, yielding a net sentence of 5 years and six months.

[82] The Crown also seeks a number of ancillary sentencing orders. The defence is not opposed to any of the ancillary orders, with the exception of restitution.

Sentencing Principles

[83] The objectives of sentencing and governing legal principles are set out in ss. 718 to 718.2 of the Criminal Code. They are well known, but it is nevertheless important to identify the relevant principles so that the victims, the offender, and the public fully understand what considerations have been taken into account by the Court in determining the fit sentence in this case.

[84] Under s. 718, the fundamental purpose of the sentence is to impose a sanction that protects our communities, fosters respect for our laws, and promotes a just, peaceful and safe society. The fundamental principle of sentencing as set out in s. 718.1 of the Criminal Code is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[85] Mr. Carlson's offences were objectively serious. The maximum penalty for sexual assault is ten years in jail, for each count. Mr. Carlson committed six such offences against five different victims. The offences were highly intrusive. Many involved the use of physical force to overcome the resistance of the victim. Others involved the abuse of vulnerable victims who were asleep or incapacitated. All of the victims were significantly harmed by Mr. Carlson's conduct. Mr. Carlson's degree of moral responsibility is also high.

[86] I have taken into account that Mr. Carlson was a young man with no prior criminal record when he committed the first of these offences. There was some evidence that Mr. Carlson was under the influence of alcohol at the time of the offences. This is not a mitigating factor but it is relevant insofar as it is a risk factor that Mr. Carlson has since recognized and has taken steps to address, by maintaining abstinence for a considerable period of time and by continuing to attend AA meetings. I have also considered Mr. Carlson's turbulent upbringing, and the many challenges and systemic disadvantages that Mr. Carlson has personally experienced as outlined in the Gladue report. Although I cannot find that these Gladue factors lead to a significant reduction in Mr. Carlson's moral blameworthiness, they are nonetheless relevant as the negative experiences in his past no doubt contributed to the attitudes and behaviours that manifested themselves in Mr. Carlson's offending conduct.

[87] The Court must also take into account the sentencing objectives set out in ss. 718 and s. 718.2 of the Criminal Code.

[88] Given the seriousness of Mr. Carlson's offences, and the harm to the victims, denunciation (per s. 718(a)) and deterrence (per s. 718(b)) are the most pressing sentencing objectives. The sentence that Mr. Carlson receives must reflect society's condemnation of sexual violence. With regard to specific deterrence, I take into account that Mr. Carlson was between 20 and 26 years old when he committed the offences. He had no prior record. Mr. Carlson has matured. He is now 32 years old. Since he has been charged, he has taken steps

to address at least some of his risk factors, and the psychological assessment indicates that he has accepted some level of responsibility for his offending conduct. Despite all this, specific deterrence is still a legitimate concern, considering Mr. Carlson's risk to reoffend. General deterrence is also an important objective. The sentence must be substantial enough to deter Mr. Carlson and others who are inclined to pursue sexual gratification at the expense of their victims from committing such intolerable acts.

- [89] I agree with Mr. Carlson's counsel that rehabilitation (per s. 718(d)) is also an important consideration, taking into account that Mr. Carlson is still only 32 years of age, and in the long term, society is best served by a sentence that ensures Mr. Carlson's rehabilitation and successful reintegration. Mr. Carlson has taken some steps to address the risk factors underlying his criminal behaviour, although based on Dr. Brink's report it does appear that he has yet to gain full insight in order to address all of the root causes of his offending. I take into account that Mr. Carlson is clearly open to treatment and programming, which is to his credit.
- [90] It is also essential to consider the principle of restraint with a particular focus on Mr. Carlson's indigenous heritage as contemplated in s. 718.2(e). In the circumstances of this case the only way that the Court can give effect to these principles is to ensure that the sentence is no longer than necessary to achieve the objectives I have outlined above. The Court cannot lose sight of the overrepresentation of indigenous offenders in the Canadian penal system. Mr. Carlson is a suitable candidate for the Indigenous Integrated Correctional Program Model for Sex Offenders. One is hopeful that other indigenous programming will be made available to Mr. Carlson while he serves his sentence, so that he maintains and continues to strengthen his connection to his indigenous heritage. Mr. Carlson should also be mindful of the resources and programming that will be available to him upon his release from prison.
- [91] There are several other principles of sentencing that are relevant to this case. One of these is the principle that a sentence should be increased or decreased on account of any aggravating or mitigating circumstances as set out in s. 718.2(a). I will address that in more detail when discussing the sentence for each count. Another relevant principle is totality, as reflected in s. 718.2(c), which states that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.
- [92] I must also take into account the fact that Mr. Carlson spent a considerable amount of time on restrictive bail conditions. Although I consider these pre-sentence restrictions on Mr. Carlson's liberty relevant, they do not warrant a specific credit or deduction for the length of the jail term he will be required to serve. Rather, this is another circumstance to be taken into account in determining a fit sentence, and in assessing its overall proportionality under the totality principle.

Sentencing Parameters and Range

- [93] The maximum sentence for sexual assault is 10 years in prison. That is the maximum sentence that could be imposed on each count. However, the sentence imposed on Mr. Carlson for each of the sexual assaults he committed must be proportionate to the objective seriousness of the offence, and Mr. Carlson's degree of responsibility, taking into account all of the sentencing objectives and principles discussed above.
- [94] Although sentencing is a highly individualized process, there is also a principle that like offenders who commit like offences should receive like sentences per s. 718.2(b). To aid in the application of that principle, courts will often consider sentencing ranges identified in the case law. It is important to acknowledge that sentencing ranges merely provide guidance. They do not set binding limits on the discretion of the sentencing judge to determine the fit sentence in any particular case. Further, a judge has the discretion to depart from a sentencing range where circumstances warrant.
- [95] The case law tells us that sexual assault is by its very nature a very serious crime, because it involves the offender's exploitation, objectification, and disregard for the dignity of the victim: *R. v. Maslehati*, 2024 BCCA 207 at paras. 65, 72; *R. v. Friesen*, 2020 SCC 9 at para. 68; *R. v. Mabior*, 2012 SCC 47 at paras. 45, 48.
- [96] The Crown cites *Maslehati* at paras. 12, 92, 95, for the proposition that in the absence of compelling mitigating factors, a penitentiary term of two years or more " will generally be required for an adult sexual assault that is prosecuted by indictment and involves aggravating circumstances, even where the assault is committed by a first time offender ". The Crown also cites *R. v. G.M.*, 2015 BCCA 165 at paras. 17, 22, 23 as authority for a sentencing range of two to six years in jail for offences of this nature. The Crown says five of the six sexual assaults committed by Mr. Carlson fall into this category. Each of them involved a significant intrusion on the dignity and autonomy of the victim. In each case, Mr. Carlson either persisted in the face of clear expressions of non-consent, or he took advantage of a vulnerable victim who was asleep or incapacitated. Mr. Carlson has significant moral blameworthiness, and there are few if any mitigating circumstances. In the result, the Crown says Mr. Carlson should receive sentences of at least two years for each of the counts except count 10, and substantially higher sentences for those offences with more aggravating features.
- [97] Defence counsel accepts that the Crown has properly described the sentencing range, but takes issue with the Crown's characterization of Mr. Carlson's offences. While acknowledging sexual assault is always a serious crime, defence counsel disputes that the offences the jury found Mr. Carlson to have committed are as grave or aggravated as the Crown would suggest. Further, when it comes to assessing Mr. Carlson's moral blameworthiness, it is necessary to consider his personal circumstances at the time. He was a young man, with no prior criminal record, who has personally experienced many of the adversities and systemic issues that have led to indigenous overrepresentation in Canada's

penal system. Mr. Carlson also had a substance abuse problem, and the circumstances of many of the offences confirm that this was a significant contributing factor to his criminal conduct. Defence counsel also submits that since his arrest, Mr. Carlson has made significant progress toward rehabilitation.

Consecutive Versus Concurrent Sentences

[98] I agree with the submission of both the Crown and the defence that Mr. Carlson should receive consecutive sentences for his sexual assaults against each of the five victims, with the sentences for the two assaults committed against K.T. being concurrent to each other, but consecutive to the other counts. The case law cited by the Crown supports the proposition that it is open for a sentencing judge to determine that consecutive sentences are appropriate for offences committed against separate victims: *R. v. Berry*, 2014 BCCA 7 at paras. 53-54. Indeed, where distinct offences with no nexus between them are committed against separate victims, consecutive sentences will generally be imposed in the absence of a "valid reason" to do otherwise: *R. v. Campbell*, 2022 NSCA 29 at paras. 1, 5, 31-36.

Count 1 [Sexual Assault Against C.W.]

[99] The Crown seeks a sentence of three years on this count. Mr. Carlson says the court should impose a sentence of 18 months.

[100] Mr. Carlson's sexual assault against C.W. was very serious. C.W. clearly communicated to Mr. Carlson that she did not consent to sex without a condom, and yet Mr. Carlson persisted. He used physical force to overcome C.W.'s resistance. He persisted even after C.W. was able to repel him once. Mr. Carlson behaved with disdain for C.W.'s personal, physical, sexual and emotional integrity. There are multiple aggravating features. Mr. Carlson did not wear a condom, increasing the risk of pregnancy and sexually transmitted infection. The victim was only 18 years old (although, at the time, Mr. Carlson was only two years older). The defence concedes that there was a relationship history between C.W. and Mr. Carlson such that his sexual assault involved an element of breach of trust, at common law. The offence had a significant emotional and psychological impact on the victim, as detailed in her victim impact statement.

[101] Mr. Carlson's moral culpability for the offence was very high, given the conduct that I have just outlined. I acknowledge the point made by defence counsel that this was Mr. Carlson's first criminal offence of any kind, and that he was only 20 years old at the time.[2] There was some evidence that Mr. Carlson was under the influence of alcohol at the time of the offence. This is not a mitigating factor but it is relevant insofar as it is a risk factor that Mr. Carlson has since recognized and has taken steps to address, by maintaining abstinence for a considerable period of time and by continuing to attend A.A. meetings.

[102] I cannot find diminished moral culpability based on Mr. Carlson's indigenous heritage and a consideration of Gladue factors. However, I do acknowledge that Mr. Carlson faced many adversities arising from his background, including desensitization to intimate partner

violence, normalization of substance misuse, poverty, educational challenges, parental abandonment, disconnection from his indigenous community, and sexual abuse. All of this formed part of the background and personal circumstances that led Mr. Carlson into a pattern of seriously antisocial sexual misconduct. None of it significantly diminishes his culpability, but the difficult road Mr. Carlson faced is part of the context for assessing his offending behaviour.

[103] Taking all of this into account, I conclude that the fit sentence for count 1 is 36 months in prison.

[104] The Crown also seeks a restitution order under s. 738(1)(b) of the Criminal Code to compensate C.W. for out-of-pocket expenses associated with counselling obtained to cope with the psychological effects of the offence. I am satisfied that C.W.'s loss is readily ascertainable. The records placed before me confirm that C.W. clearly incurred expenses totalling \$3,196 CND and \$700 USD. Nevertheless, the making of a restitution order is a matter within the discretion of the court. I have no hesitation in accepting that Mr. Carlson bears moral responsibility for C.W.'s financial loss. I have no direct evidence about Mr. Carlson's ability to pay, and ability to pay is not a legal pre-requisite to a restitution order. However, the reality is that Mr. Carlson has been in custody for almost one full year, and will be receiving a lengthy penitentiary sentence. I have no reason to believe Mr. Carlson has savings or access to substantial sums of money, and I would not expect that to be the case given his custodial situation. I find that saddling Mr. Carlson with a debt of almost \$4,000 upon his release from prison is likely to undermine his continuing efforts at rehabilitation. It is in the long term interests of the community that Mr. Carlson reintegrate into society and establish his financial independence. For all of these reasons, while I find that the Crown's application for a restitution order is entirely reasonable, I exercise my discretion and decline to grant it.

Count 5 [Sexual Assault of T.L.]

[105] The Crown seeks a three year prison sentence for this count. Defence counsel submits that the fit sentence for this count is one year in jail. Likely part of the reason why the parties are so far apart in their sentencing recommendations on this count has to do with the factual dispute arising from the ambiguity of the jury's verdict. I found above that Mr. Carlson caused T.L.'s clothing to be removed and physically penetrated her vagina without consent, but the evidence does not establish beyond a reasonable doubt that Mr. Carlson had non-consensual sexual intercourse with T.L.

[106] On these findings, the sexual assault against T.L. was objectively very serious, and Mr. Carlson's degree of moral responsibility was substantial. Experiencing a feeling of extreme intoxication or lack of control, T.L. was in need of help. Mr. Carlson offered T.L. the chance to stay on his couch, only to then take advantage of her vulnerable state by significantly intruding on her autonomy and sexual integrity. Again, there are multiple aggravating features. There was an element of breach of trust, given the victim's vulnerability and her

reliance on Mr. Carlson for assistance. T.L. experienced a physical injury I have no difficulty concluding from her testimony that she was traumatized by the incident. The offence clearly had a significant impact on T.L.

[107] Again, I take into account Mr. Carlson's difficult upbringing, his indigenous heritage and associated marginalization, and his post-arrest steps toward rehabilitation.

[108] I conclude that a fit sentence for count 5 is 30 months in prison, consecutive to the sentence on counts 1, 6, 9, and 10.

Counts 6 and 8 [Sexual Assault of K.T.]

[109] The Crown seeks sentences of four years in prison on counts 6 and 8, concurrent to each other but consecutive to all other counts. Defence counsel says the fit sentence for these offences is 30 months concurrent on each count.

[110] The two sexual assaults Mr. Carlson committed against K.T. were objectively grave. There was a significant level of violence involved. The victim clearly voiced her lack of consent and physically resisted Mr. Carlson, who overpowered her. Mr. Carlson's degree of moral blameworthiness is high. The language he used during the first assault was indicative of his disdain toward the victim's sexual autonomy and bodily integrity.

[111] There were multiple aggravating features. The fact that K.T. was a former intimate partner is an aggravating factor.[3] On both occasions Mr. Carlson persisted despite a clearly expressed lack of consent, through words and actions. On both occasions, he had non-consensual unprotected sexual intercourse with the victim, exposing her to the risk of unwanted pregnancy or sexually transmitted infection. The offences occurred in the victim's home, in circumstances where Mr. Carlson arrived unannounced on the balcony, was permitted access to the home, but then deliberately disregarded the scope of permission given to him by K.T. The offences had significant impact on the victim. On the first occasion, she was left with physical injuries. K.T. also suffered psychological trauma, including feelings of shame, embarrassment, and a lack of security and personal safety in her own home.

[112] Again, I have taken into account Mr. Carlson's background, personal circumstances, his acknowledgment of responsibility, and the steps he has taken toward rehabilitation since his arrest.

[113] My conclusion is that a penitentiary sentence of 42 months is required for each of these counts, 6 and 8. Those sentences are to be served concurrently to each other, but consecutive to the sentences on all other counts.

Count 9 [Sexual Assault of T.S.]

[114] The Crown submits that Mr. Carlson should receive a three year prison term for count 9. Defence counsel says the sentence on this count should be a prison sentence of 24 months.

[115] I would characterize this offence as an objectively serious sexual assault, and Mr. Carlson's degree of moral responsibility was high. The victim awoke to find Mr. Carlson intruding upon her sexual integrity without consent. When the victim voiced her lack of consent, Mr. Carlson persisted and his conduct escalated to include non-consensual sexual intercourse. Again, there were multiple aggravating features. Mr. Carlson took advantage of a vulnerable victim who was asleep when the assault began. The offence was committed against an intimate partner. Mr. Carlson had non-consensual sexual intercourse with the victim without a condom. T.S. was traumatized during the sexual assault and has suffered lasting psychological harm. Mr. Carlson's conduct has undermined her dignity and self-worth, and she has experienced flashbacks of the incident.

[116] All of this must be considered against the backdrop of Mr. Carlson's personal circumstances, indigenous background, and his conduct subsequent to arrest.

[117] I find that a penitentiary sentence of 24 months is required for count 9. This sentence will be consecutive to the sentences on counts 1, 5, and 6 and 10.

Count 10 [Sexual Assault of A.A.]

[118] The Crown recommends a sentence of one year for this count. Defence counsel says the sentence for this count should be one month.

[119] Although sexual assault is always a serious crime, the conduct in issue in this count is not as objectively grave as the conduct involved in the other counts on this indictment. I say that because it was less intrusive. Despite this, one must not lose sight of the aggravating features. Mr. Carlson took advantage of a vulnerable victim who was sleeping at the time. The victim was only 18 and Mr. Carlson was in his mid 20s at the time of this offence. Furthermore, Mr. Carlson and A.A. were in an intimate partner relationship such that his violation of her bodily integrity involved a betrayal of trust.

[120] I find that the fit sentence for this count is seven months in jail, to be served consecutively to the sentences on counts 1, 5, 6, and 9.

Totality

[121] The total effective sentence, without credit for time spent in custody, is 139 months, or 11 years and 5 months in prison. As a final step in the analysis, I must consider the principle of totality as described in *R. v. Li*, 2009 BCCA at paras. 27-28. To be clear, there is no automatic reduction in sentence due to totality: *R. v. Sinclair*, 2022 MBCA 65 at para. 74. The court must consider whether the sentence in its totality is proportionate to the overall seriousness of the offences and the offender's degree of responsibility, or whether the sentence might be regarded as crushing.

[122] I cannot say that a sentence of 11 years and 5 months in prison is entirely out of proportion to the seriousness of Mr. Carlson's offending behaviour and his degree of moral responsibility in committing these six sexual assaults against five separate victims.

However, in view of Mr. Carlson's age at the time of the offences, the fact that he had no prior criminal record, and the steps that Mr. Carlson has taken since arrest and since his remand in custody following the verdict, I conclude that a sentence of more than 11 years would be crushing. In the long run, society is best served by a sentence that advances the interests of rehabilitation, so long as that can be accomplished in a manner that also reflects the objectives of proportionality, denunciation, and deterrence.

[123] I conclude that there should be a reduction in the sentences for several of the counts to produce a sentence that is not crushing in its totality. I will therefore reduce the sentence on count 1 (C.W.) to 32 months, reduce the sentence on count 5 (T.L.) to 27 months, and reduce the sentences on counts 6 and 8 (K.T.) to 35 months. The result is a prison sentence of 126 months, or 10 years and five months.

Credit for Time Spent in Custody

[124] I find it appropriate to break up the credit for time spent in custody and allocate a portion of it to each count. That way, the sentence imposed on each count remains proportionate to the whole and none of the sentences is artificially reduced or diminished by comparison to the others. The total amount of credit, in months, is 25 months. I hasten to add that by using months I have effectively rounded up to give Mr. Carlson the benefit of the most favourable calculation of the credit for pre-sentence custody. Allocating the 25 months of credit between the counts in relation to each of the five complainants, there will a deduction of five months for each count.

The Resulting Sentences

[125] The resulting sentences are reflected in the following table. Mr. Carlson, could you stand, please. I sentence you as follows:

Count

Victim

Sentence before Totality

Consecutive or Concurrent

Sentence after Totality

Credit

for Pre-Sentence Custody

Net

Sentence

1

CW

36 months

Consecutive

32 months

5 months

27 months

5

TL

30 months

Consecutive

27 months

5 months

22 months

6

KT

42 months

Consecutive

35 months

5 months

30 months

8

KT

42 months

Concurrent

35 months

5 months (concurrent to count 6)

30 months (concurrent to count 6)

9

TS

24 months

Consecutive

24 months

5 months

19 months

10

AA

7 months

Consecutive

7 months

5 months

2 months

139 months

(11 years, 5 months)

125 months (10 years, 5 months)

25 months

100 months

(8 years, 4 months)

Ancillary Orders

[126] The Crown seeks an order requiring Mr. Carlson to comply with the Sex Offender Information Registration Act, R.S.C. 2004, c. 10 [SOIRA]. Under s. 490.012(3) of the Criminal Code, the sentencing court shall make the order unless one of the exempting conditions set out in subparagraphs (a) or (b) has been established. Mr. Carlson does not argue that either of those exempting conditions are satisfied. I therefore order that Mr. Carlson is required to comply with the provisions of SOIRA.

[127] Under s. 490.013(3), the duration of the order is for life where (a) the offender is convicted of two or more designated offences in the same proceeding, and (b) those offences demonstrate or form a pattern of behaviour showing an increased risk of reoffending by committing a sex crime. I find that those conditions are present in this case. I therefore direct that the term of the SOIRA order is for life.

[128] The Crown also seeks a DNA collection order. Sexual assault is a primary designated offence under s. 487.04 of the Criminal Code. Under s. 487.051, I order that Mr. Carlson is to provide a DNA sample for the DNA databank.

[129] I also grant the Crown's application for a mandatory firearms prohibition order under s. 109(1)(a) of the Criminal Code. The duration of the order will be ten years for the firearms and other items listed in s. 109(2)(a), and life for the items listed in s. 109(2)(b).

[130] I also make an order under s. 743.21 of the Criminal Code prohibiting Mr. Carlson from communicating directly or indirectly with any of the victims, namely C.W., T.L., K.T., T.S., and A.A. during the custodial period of his sentence.

[131] Finally, I direct that a copy of these reasons when transcribed, along with copies of the psychological assessment, the Gladue report, and all of the other exhibits at sentencing, be forwarded to the Correctional Service of Canada under s. 743.2 of the Criminal Code for the proper administration of Mr. Carlson's sentence.

[discussion with counsel]

[132] Given the fact that Mr. Carlson has been in custody for almost one year, will be serving a lengthy penitentiary term, he will be in no position to pay a victim fine service charge. The victim fine service charges are waived.

"Riley J."

[1] 118 days, plus 31 days, plus 337 days = 486 days

[2] Mr. Carlson has a criminal record arising from his sexual assault conviction in Provincial Court. That offence was committed in August of 2020, and the conviction was not entered until 30 June 2022. Accordingly, Mr. Carlson had no prior criminal record when he committed the offences for which he is now being sentenced.

[3] I note that s. 718.2(a)(ii) was amended by S.C. 2019, c. 25, s. 293 to make the commission of an offence against an intimate partner a statutory aggravating factor. Prior to the amendment, the statutory aggravating factor in s. 718.2(a)(ii) only applied to an offence committed against a spouse as defined in s. 2. However, even before the amendment, the fact that an offence was committed against a current or former intimate partner was regarded as an aggravating factor at common law, the R. v. Cook, 2009 QCCA 2423 at paras. 74-81 and the cases cited therein.

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